

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|  |   |                       |
|--|---|-----------------------|
| ERUBY ABREGO,                          | ) |                       |
|  | ) |                       |
| Plaintiff,                             | ) |                       |
|  | ) |                       |
| v.                                     | ) | No. 23-cv-01740       |
|  | ) |                       |
| REYNALDO GUEVARA, GERI LYNN            | ) | Hon. Steven C. Seeger |
| YANOW, as special administrator of the | ) |                       |
| ESTATE OF ERNEST HALVORSEN,            | ) |                       |
| ANTHONY WOJCIK, DANIEL ENGEL,          | ) |                       |
| JEROME BOGUICKI, RAY SCHALK,           | ) |                       |
| FRANK CAPPITELLI, the CITY OF          | ) |                       |
| CHICAGO, ANDREANA TURANO               | ) |                       |
| MICHIELS, and COOK COUNTY,             | ) |                       |
|  | ) |                       |
| Defendants.                            | ) |                       |

**TURANO’S MEMORANDUM OF LAW IN SUPPORT OF  
DISMISSAL OF PLAINTIFF’S AMENDED COMPLAINT**

**INTRODUCTION**

On March 21, 2023, Plaintiff filed a Complaint stemming from his arrest and conviction for the murder of Jose Garcia and aggravated battery of Julio Lugo in 1999. Dkt. #1, ¶1. On July 31, 2023, Defendant Turano filed a motion to dismiss or alternatively, for a more definite statement. Dkt. #59. Rather than respond to Turano’s motion, Plaintiff filed an Amended Complaint. Dkt. #66. Plaintiff sues multiple former Chicago Police Officers, the City of Chicago, Turano, and Cook County. Plaintiff alleges the following counts against Turano: Count II- 42 U.S.C. § 1983 – Coerced and False Confession (Fifth and Fourteenth Amendments), Count III 42 U.S.C. § 1983 – Malicious Prosecution and Unlawful Detention (Fourth and Fourteenth Amendments), Count IV 42 U.S.C. § 1983 – Failure to Intervene, Count VII State Law Claim –

Malicious Prosecution, Count VIII State Law Claim – Intentional Infliction of Emotional Distress, and Count IX State Law Claim – Willful and Wanton Conduct.

Turano was an Assistant State’s Attorney (ASA) with the Cook County State’s Attorney’s Office at the time. In her capacity as an ASA, Turano took Plaintiff’s court reported statement regarding the murder of Garcia and aggravated battery of Lugo after the Police Officer Defendants already secured two witness statements implicating Plaintiff and after Plaintiff had already been arrested. Dkt. # 66, ¶ 25, 49, 50, 51, 60, 61, 62, & 95. Plaintiff further concedes he never told Turano about any alleged abuse by the Police Officer Defendants.

Turano is entitled to absolute prosecutorial immunity as to all claims because her act of taking Plaintiff’s court-reported statement was performed in her prosecutorial capacity after probable cause was already established and after Plaintiff was arrested. Alternatively, Turano is entitled to qualified immunity as to Count IV-Failure to Intervene. Alternatively, Count IX should also be dismissed because Illinois Law confers no separate cause of action for willful and wanton conduct.

### **LEGAL STANDARD**

When ruling on a motion to dismiss pursuant to Rule 12(b)(6), courts accept as true the well pled facts of a complaint and draw all reasonable inferences in favor of the plaintiff. *Perkins v. Silverstein*, 939 F.2d 463, 466 (7th Cir. 1991). A court is not required, however, to accept as true a legal conclusion couched as a factual allegation or unsupported conclusions of fact. *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Hickey v. O’Bannon*, 287 F.3d 656, 658 (7th Cir. 2002).

Traditionally, courts refer to only what is contained in the pleadings when evaluating motions to dismiss and may treat the motion as one for summary judgment if matters outside the

pleadings are presented. Fed. R. Civ. P. 12(d). The pleadings include the complaint, the answer, and any written instruments attached as exhibits. Fed. R. Civ. P. 10(c); *Northern Ind. Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998); see also *Hyung Seok Koh v. Graf*, 2013 U.S. Dist. LEXIS 136341, at \*26 (N.D. Ill. 2013). However, a court may consider extraneous documents for a motion to dismiss—without treating it as a motion for summary judgment—if the extraneous matters are referred to in the plaintiff’s complaint and are central to the Plaintiff’s claim. *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431-42 (7<sup>th</sup> Cir. 1993); Koh, 2013 U.S. Dist. LEXIS, at \*26-27 (internal quotation marks omitted). The Seventh Circuit held in *Geinosky v. City of Chicago* that there are multiple instances where documents “outside the pleadings” can be considered at the 12(b)(6) stage. *Geinosky*, 675 F.3d 743, 745 fn. 1 (7th Cir. 2012) (“A motion under Rule 12(b)(6) can be based only on the complaint itself, documents attached to the complaint, documents that are critical to the complaint and referred to in it, and information that is subject to proper judicial notice.”) *188 LLC v. Trinity Industries, Inc.*, 300 F.3d 730, 735 (7th Cir.2002) (documents referred to in complaint and central to claim); *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1248 (7th Cir.1994) (same)

### **PLAINTIFF’S ALLEGATIONS**

On May 22, 1999, Jose Garcia and Ramone Torres were sitting in a parked car near the intersection of Belmont and Monticello in Chicago. Dkt. #66, ¶ 29.<sup>1</sup> Julio Lugo and Isidro Quinones were standing next the parked car. Dkt. #66, ¶, 30. While they were talking by the car, a male shouted gang slogans from across the street and opened fire with the handgun. Dkt. #66, ¶ 31. Jose Garcia was struck in the head and eventually succumb to his injuries. Dkt. #66, ¶ 32, 36.

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<sup>1</sup> For purposes of this motion, Turano accepts the allegations as Plaintiff alleges them, but she denies any wrongdoing alleged.

Julio Lugo was struck in the shoulder and buttocks and was taken to the hospital for treatment before eventually being released. Dkt. #66, ¶ 34, 37.

Lugo was a member of the Latin Kings street gang and the shooter was suspected to be a member of the rival Orchestra Albany (“OA”) gang as he yelled slogans such as “OA Love” and “King Killer” prior to the shooting. Dkt. #66, ¶ 38, 39. Just before the shooting, Lugo and Quinones had been riding in the car with Fred Marrero, another Latin King, when they were confronted by several members of the OA gang, who were riding in a gold-colored Chevy Caprice, that shouted gang slogans and threw bottles at the Latin King’s car. Dkt. #66, ¶ 40. Police searched the area and located a gold-colored Chevy Caprice belonging to Juan Parra, a suspected OA member. Police arrested Parra and took him to Area 5. Dkt. #66, 45. After being held overnight, Parra gave a statement to police and an Assistant States Attorney. *See* the Court Reporter Statement of Juan Parra taken by ASA Jake Rubinstein attached as Exhibit A.<sup>2</sup> In Parra’s statement, he said that he, “Sef”, who he identified as Plaintiff, Cain, who he later identified as Jeremiah Cain, and “PeeWee” drove into Latin King territory, encountered a car containing Latin Kings, and got out of their car to pursue the Latin Kings, who got away. Dkt. #66, ¶ 49, 50; Ex. A, pg. 8, 12-19. “PeeWee” and Cain returned to the car but Plaintiff did not. Dkt. #66, ¶ 50; Ex. A, pg. 19. Parra heard several shots and saw Plaintiff running back to the car holding a handgun. Dkt. #66, ¶ 50; Ex. A. pg. 21. Plaintiff alleges the Police Officer Defendants obtained Parra’s statement by coercion, suppressed that they obtained Parra’s statement by

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<sup>2</sup> Juan Parra and Jeremiah Cain’s Statements are summarized in Plaintiff’s Amended Complaint and critical to analyzing the allegations thereof. As such, it is proper for the Court to consider them in ruling on Turano’s 12(b)(6) motion to dismiss without converting it into a Motion for Summary Judgment. *See Geinosky v City of Chicago*, 675 F.3d 743, 745 fn. 1 (7th Cir. 2012), *188 LLC v. Trinity Industries, Inc.*, 300 F.3d 730, 735 (7th Cir.2002) *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1248 (7th Cir.1994).



coercion, suppressed all of the circumstances of Parra's statement, and suppressed that they had fabricated the statement. Dkt. #66, ¶ 46, 47, & 51.

Next, police arrested Jeremiah Cain and located the murder weapon in Cain's bedroom. Dkt. #66, ¶ 53-55. Police questioned Cain and eventually, he agreed to give a statement. Dkt. #66, ¶ 56-61. See the Court Reporter Statement of Jeremiah taken by ASA Nancy Nazarian attached as Exhibit B.<sup>2</sup> In Cain's statement, he described meeting with Plaintiff, Parra who he identifies as "Howie", and "PeeWee," in Koz Park, and him giving Plaintiff a handgun. Dkt. #66, ¶ 60; Ex. B, pg. 6-10. Plaintiff, Cain, Parra, and "PeeWee" drove to Belmont near Kimball where they saw some Latin Kings, and Cain, Parra and "PeeWee" got out of the car and tried to throw bottles at the Latin King's car. Ex. B, pg. 14-15. Plaintiff remained in the car. *Id.* The Latin Kings got away and the four of them drove around the corner. Ex. B, pg. 16-17. Plaintiff then went to find the Latin King's car while the others waited in the alley. Dkt. #66, ¶ 60; Ex. B, pg. 18-19. Cain heard several gunshots, after which Plaintiff returned to the car and gave the handgun back to Cain. Dkt. #66, ¶ 60; Ex. B, pg 18-20. Plaintiff alleges the Police Officer Defendants obtained Cain's statement by coercion, suppressed that they obtained Cain's statement by coercion, suppressed all of the circumstances of Cain's statement, and suppressed that they had fabricated the statement. Dkt. #66, ¶ 59, 62.

Next, police arrested Plaintiff and Nicasio Santiago. Plaintiff alleged the Police Officers physically and psychologically abused and mistreated Plaintiff during questioning. Dkt. #66, ¶ 72-79, 83-93. Plaintiff alleges that after the abuse from the Police Officer Defendants, Plaintiff's will was overborn and he agreed to provide a statement to Turano in which he falsely confessed to committing the shooting. Dkt. #66, ¶ 95. Plaintiff concedes Turano played no role in the alleged misidentification of Plaintiff as the shooter by witnesses. Dkt. #66, ¶ 102-119.

In September 2004, Plaintiff was tried for the murder of Garcia and aggravated battery with a firearm of Lugo Dkt. #66, ¶ 120. Plaintiff testified in his own defense at trial, denying that he was involved in the shooting and claimed that he was tortured. Dkt. #66, ¶ 123. Plaintiff's trial testimony concedes he was alone with Wojcik whenever Wojcik allegedly struck Plaintiff at the police station. *See* Transcript of Plaintiff's Trial Testimony, attached as Ex. C, pp. 73-74, 77-78.<sup>3</sup> Therefore, Turano could not have witnessed these alleged beatings. Moreover, Plaintiff concedes he never advised Turano of any alleged beatings. The pertinent parts of Plaintiff's testimony involving Turano are as follows:

Q The State's attorney was there. Why didn't you tell her that the officer was beating you?

A Because I was scared.

Ex. C, p. 82, lines 9-11

Q Your signature is on each and every page of that statement? [Referring to Plaintiff's Court Reported Statement]

A Each and every page

Q And in fact, everything that's in that statement, you were asked questions and you gave those answers, correct?

A Yes

Q And after the statement was done, you went through that statement line by line with the assistant state's attorney, didn't you?

A Yes

Q At that time you did that, you made corrections, isn't that right?

A Yes

Q And you initialed those corrections, isn't that right?

A Yes

Ex. C, p. 99, lines 15-24 and p.100, lines 1-7.

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<sup>3</sup> Plaintiff's trial testimony is described in Plaintiff's Amended Complaint and is critical to analyzing the allegations against Turano. As such, it is proper for this Court to consider Plaintiff's sworn testimony in ruling on Turano's motion. *See Geinosky*, 675 F.3d at 745 fn. 1 (7th Cir. 2012), *188 LLC.*, 300 F.3d at 735 (7th Cir.2002) *Wright*, 29 F.3d at 1248 (7th Cir.1994) Moreover, the Court may take judicial notice of prior trial testimony in related cases. *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364, 369 (7th Cir.1983). To allow Plaintiff to testify under oath to one version of events at his criminal trial and allow Plaintiff to allege a different version of events in an unsworn pleading signed by his attorney in this Court would make a mockery of our judicial system. *Dye v. Wargo*, 253 F.3d 296, 298 (7th Cir. 2001), *Brown v. Oil States Skagit Smatco*, 664 F.3d 71, 77 (5th Cir. 2011).

Q Everything in this statement you said?  
A Yes. It's all a lie

Ex. C, p. 100, lines 11-12.

Q You were – no, that everything you said was being taken down, right?  
A Yes  
Q You could have said anything you wanted to, right?  
A Right  
Q Never said anything about any sort of beating, right?  
A Right. Because I was scared.  
Q In fact, what you did say is that you were treated well?  
A Right. Because I was scared.  
Q By the assistant state's attorney, right?  
A Right  
Q And by the police?  
A Right

Ex. C, p. 101, lines 6-21.

Q At no time while she was at the station did you ever tell her [Turano] anything about being beaten?  
A No. I was scared to come forth then.  
Q At any time you were there, did you tell her that you had any injuries anywhere?  
A No, I didn't.

Ex. C, p. 102, lines 5-10.

Plaintiff's sworn trial testimony refutes is unsworn Amended Complaint allegations that Turano knew of any alleged abuse. Plaintiff was ultimately convicted of the first-degree murder of Garcia and aggravated battery with a firearm of Lugo. Dkt. #66, ¶ 120. In July 2022, the Circuit Court of Cook County vacated Plaintiff's conviction, and the State entered a motion of *nolle prosequi* on the remaining counts against him. Dkt. #66, ¶ 133.

### **ARGUMENT**

#### **I. TURANO IS ENTITLED TO ABSOLUTE PROSECUTORIAL IMMUNITY FOR ALL OF PLAINTIFF'S FEDERAL CLAIMS (COUNTS II, III, AND IV).**

It is well settled that prosecutors are absolutely immune from suits for damages relating to their initiation and presentation of the state's case. *Imbler v. Pachtman*, 424 U.S. 409, 431

(1976). “[A]bsolute immunity shields prosecutors even if they act maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence. *Smith v. Power*, 346 F.3d 740, 742 (7th Cir. 2003). The policy served is “concern that harassment by unfounded litigation” could “cause a deflection of the prosecutor’s energies from his public duties” and lead him to shade his decisions instead of exercising the independence of judgment required by his public trust.” *Imbler*, 424 U.S. at 423. The *Imbler* court held that whether or not an action falls within the scope of his prosecutorial duties is determined by its function. *Id.* The *Imbler* court recognized that “the duties of a prosecutor in his role as advocate for the State involves actions preliminary to the initiation of a prosecution,” and “decisions on a wide variety of sensitive issues” including “questions of whether to present a case to a grand jury, whether to file an information, whether and when to prosecute . . .” *Id.* at 431 n.33. Furthermore, “[p]reparation, both for the initiation of the criminal process and for a trial, may require the obtaining, reviewing, and evaluating of evidence.” *Id.* The Court observed in *Imbler* that an out-of-court “effort to control the presentation of [a] witness’ “testimony” is entitled to absolute immunity. *Id.* at 430 n.32.

For purposes of absolute immunity, it is irrelevant whether the protected party acted negligently, with malice, or in bad faith. *Bradshaw v. DeGand*, 1992 U.S. Dist. LEXIS 911, \*4 (N.D. Ill. January 30, 1992 (Conlon, J.) (citing *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (absolute immunity for the judiciary precludes civil actions, even when a judge acts in bad faith)). When considering an immunity defense, a court should focus on the conduct for which immunity is claimed, not the harm that the conduct allegedly caused or the question of whether it was lawful. *Buckley v. Fitzsimmons*, 509 U.S. 259, 271 (1993). Immunity is immunity from suit,

not merely a defense to liability. See, e.g., *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (discussing qualified immunity).

In *Fields v. Wharrie*, 672 F.3d 505 (7th Cir. 2012), after the plaintiff’s murder conviction was reversed and he was granted a certificate of innocence, he sued several prosecutors involved in his criminal prosecution. The Seventh Circuit held in *Fields* that a prosecutor is absolutely immune from suit for all actions and decisions in furtherance of his prosecutorial duties and found further that absolute immunity extends beyond an individual prosecutor’s decision to indict or try a case. *Fields*, 672 F.3d at 509.

When “determining whether particular actions of government officials fit within a common-law tradition of absolute immunity, or only the more general standard of qualified immunity, [courts] have applied a ‘functional approach,’ “looking to “the nature of the function performed, not the identity of the actor who performed it.” *Smith v. Burge*, 222 F.Supp.3d 669, 694 (N.D. Ill. 2016) (citing *Buckley*, 509 U.S. at 269) When considering a prosecutor’s function, a significant factor is whether probable cause to arrest plaintiff existed. *Hill v. Coppleson*, 627 F.3d 601, 605 (7th Cir. 2010) (Citing *Buckley*, 509 U.S. at 274). Once probable cause exist to arrest plaintiff, a prosecutor can consider herself to be an advocate for the State. *Id.*

In this case, the allegations in the Amended Complaint establish that probable cause existed to arrest Plaintiff prior to Defendant Turano’s involvement. Probable cause to arrest exists “when the facts and circumstances that are known to [the officer] reasonably support a belief that the individual has committed, is committing, or is about to commit a crime.” *Holmes v. Village of Hoffman Estates*, 511 F.3d 673, 679 (7th Cir. 2007). Both Juan Parra and Jeremiah Cain gave statements implicating Plaintiff in the shooting of Garcia and Lugo. Dkt. #66, ¶ 50, 60; Ex. A, pg. 8-21; Ex. B, pg. 14-20. Police found a handgun in Cain’s bedroom that was later

confirmed to be the murder weapon. Dkt. #66, ¶ 54-55. While Plaintiff alleges the Police Officer Defendants obtained Parra and Cain's statement through coercion, Plaintiff also alleges the Police Officer Defendants suppressed all of the circumstances of both statements. Dkt. #66, ¶ 46, 47, 51, 59, & 62. Plaintiff does not allege Turano knew of any alleged coercion used to secure these statements or that she was part of the alleged conspiracy between the Defendant Police Officers. Dkt. #66, ¶ 203-209.

Accepting Plaintiff's allegations as true, probable cause existed to arrest Plaintiff prior to Turano's involvement. Plaintiff also concedes she was arrested and taken to the police station after these statements were secured. Dkt. #66 ¶ 63. Therefore, there was probable cause to arrest based upon Parra and Cain's statements and Plaintiff was in fact arrested prior to any involvement by Turano. Plaintiff also concedes that he agreed to provide a statement based upon the Police Officer Defendants alleged interrogation before meeting Turano. Dkt. #66 ¶¶ 92-94. With the facts and circumstances surrounding Parra and Cain's statement suppressed from Turano, she is left with the statements on their face, the fact that the murder weapon was found in Cain's bedroom, adding corroboration to Cain's statement and Plaintiff's alleged willingness to give a court reported statement all while Plaintiff concedes he never told Turano about any alleged coercion or torture. Clearly, probable cause existed and Plaintiff was indeed under arrest prior to Turano's involvement as an advocate for the State in a prosecutorial capacity. Therefore, Turano is entitled to absolute immunity.

Furthermore, Turano's role was limited to taking the court-reported statement of Plaintiff. Courts in this district have found that ASAs taking statements from suspects are entitled to absolute prosecutorial immunity. *See Kitchen v Burge*, 781 F.Supp. 2d 721, 730 (2011); *Andrews v. Burge*, 660 F. Supp. 2d 868, 878 (N.D. Ill. 2009). The *Andrews* court stated:

It is within the proper role of an advocate for the State to take a court reported statement, as well as to see and hear the defendant give the statement, rather than simply take the word of the police that the defendant has confessed. The prosecutor acts within his core functions when he evaluates the evidence gathered by police and, in the case of a confession, takes steps to see that the words of the defendant are properly preserved. A prosecutor should not be deprived of immunity because, in a case of murder, he decides to hear what the defendant has to say for himself.

*Andrews v. Burge*, 660 F. Supp. 2d 868, 878 (N.D. Ill. 2009). Plaintiff's allegations that Turano was acting in an investigatory capacity in taking Plaintiff's statement is a legal conclusion that is not entitled to the presumption of truth. *Allain*, 478 U.S. at 286 (1986); *O'Bannon*, 287 F.3d at 658 (7th Cir. 2002).

Moreover, Plaintiff's allegations that Turano had knowledge of his alleged abuse by the Police Officer Defendants prior to his giving his court-reported statement is refuted by Plaintiff's own trial testimony. Ex. C, p. 82, lines 9-11; 101, lines 6-21; 102, lines 5-10. At trial, Plaintiff admitted he never told Turano of any alleged abuse. *Id.* As such, Plaintiff's unsworn Amended Complaint allegations signed by his attorney implying Turano's knowledge of Plaintiff's alleged abuse are unsupported by his sworn trial testimony and not entitled to the presumption of truth. Plaintiff's allegations concede probable cause existed prior to Defendant Turanos' involvement in the case and her role in taking Plaintiff's statement was squarely prosecutorial in nature. Therefore, Turano is entitled to absolute prosecutorial immunity and Counts II, III, and IV should be dismissed.

## **II. ALTERNATIVELY, TURANO IS ENTITLED TO QUALIFIED IMMUNITY FOR COUNT IV.**

Even if this Court concluded that Turano is not entitled to absolute immunity at this juncture, it should dismiss Plaintiff claim for failure to intervene in Count IV. The qualified immunity doctrine "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person would have known.” *Pearson v Callahan*, 555 U.S. 223, 231 (2009) (internal quotations omitted). In assessing whether a state actor is entitled to qualified immunity, courts undertake a two-part inquiry. *Saucier v Katz*, 533 U.S. 194, 200 (2001). First, courts consider whether the facts alleged set forth a violation of a constitutional right. *Id.* at 201. Second, courts consider whether the right was clearly established at the time of the alleged misconduct. *Id.* Courts have discretion to decide which of these two prongs “should be addressed first in light of the circumstances in the particular case at hand.” *Pearson*, 555 U.S. at 236. As with absolute immunity, qualified immunity entitles defendants to immunity from suit rather than just a defense from liability. *Mitchell v Forsyth*, 472 U.S. 511, 526 (1985).

Turano is entitled to qualified immunity as to Plaintiff’s failure to intervene claim (Count IV) because there was no clearly established duty for prosecutors to intervene in the circumstances alleged in the complaint in 1999 and Plaintiff admits he never told Turano about any alleged abuse, but instead answered all her questions while giving his court-reported statement. A right is clearly established when, at the time of the challenged conduct, the contours of a right are “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 640, 639-40 (1987) To show that the right in question was clearly established at the time the alleged violation occurred, a plaintiff must point to closely analogous cases which establish that the conduct was unlawful or demonstrate that the violation was so obvious that a reasonable state actor should know that what he is doing—or in this case not doing—violates the constitution. *Vickery v. Jones*, 100 F.3d 1334, 1339-40 (7th Cir. 1996); see also *Lunini v. Grayeb*, 395 F.3d 761, 769 (7th Cir. 2005) (“[T]he plaintiff must demonstrate either that a court has upheld the purported right in a case factually similar to the one under review, or that the alleged misconduct constituted an obvious violation



of a constitutional right.”). “Although the plaintiff need not point to a case directly on point, ‘existing precedent must have placed the statutory or constitutional question beyond debate.’” *Doe v. Village of Arlington Heights*, 782 F.3d 911, 915 (7th Cir. 2015) (quoting *Ashcroft v. Al-Kidd*, 131 S.Ct. 2074, 2083 (2011) (emphasis added)). Counts in this district have found that prior to 2012, a prosecutor’s duty to intervene was not clearly established. *Wilson v. Est. of Burge*, No. 21-CV-03487, 2023 WL 2750946, at \*23 (N.D. Ill. Mar. 31, 2023); *Serrano v. Guevara*, 315 F. Supp. 3d 1026, 1038 (N.D. Ill. 2018); *Andrews v. Burge*, 660 F. Supp. 2d 868, 876 (N.D. Ill. 2009). There is no clearly established duty for Turano to intervene in the circumstances alleged in the complaint in 1999 when she is unaware of those circumstances as they occurred prior to meeting Plaintiff and Plaintiff concedes he never told Turano of the alleged circumstances leading to his agreement to give a court-reported statement. Therefore, Defendant Turano is entitled to qualified immunity as to Count IV.

### **III. DEFENDANT TURANO IS ENTITLED TO ABSOLUTE IMMUNITY FOR THE STATE LAW CLAIMS AGAINST HER (COUNTS VII, VIII, and IX).**

As Plaintiff’s state law claims against Defendant Turano are necessarily predicated upon the same factual allegations as Plaintiff’s §1983 claims, Defendant Turano is entitled to absolute immunity from plaintiff’s state law claims as well. Illinois courts have followed the United States Supreme Court’s pronouncement in *Imbler* on prosecutorial immunity. In *White v. City of Chicago*, 369 Ill. App. 3d 765 (1st Dist. 2006), the Illinois Appellate Court reaffirmed the application of absolute prosecutorial immunity, even in light of allegations of intentional misconduct by the prosecutor. In *White*, the plaintiffs alleged that the State’s Attorney’s Office: (a) re-investigated a murder for which the plaintiffs had been cleared, and charged them knowing they had no connection to the crime; (b) determined that another person had committed the murders; (c) determined that the main prosecution witness was untruthful; and (d) determined

that the physical evidence did not support the charges. *White*, 369 Ill. App. 3d at 768. The plaintiffs alleged that the second investigation actually supported the findings of the original investigation clearing the plaintiffs. Despite allegations of actual knowledge of these facts, and that the State's Attorney and one of his assistants suppressed exculpatory information and induced a prosecution witness to testify falsely before the grand jury by paying him \$4,000, the appellate court upheld the defendants' immunity. Recognizing the severity of the allegations against the prosecutors, the *White* court found that they were nevertheless protected from suit, based on absolute prosecutorial immunity. *Id.* at 775-77.

Defendant Turano is entitled to absolute prosecutorial immunity as to Counts VI, VIII, and IX, and said Counts should, therefore, be dismissed with prejudice.

**IV ALTERNATIVELY, COUNT IX SHOULD BE DISMISSED BECAUSE ILLINOIS LAW CONFERS NO SEPARATE CAUSE OF ACTION FOR WILLFUL AND WANTON CONDUCT.**

Count IX of Plaintiff's Complaint purports to assert a cause of action under Illinois law for "Willful and Wanton Conduct." Dkt #66, ¶ 231-234. Plaintiff alleges Defendants have a duty to refrain from willful and wanton conduct in connection with the investigation of the murder of Jose Garcia and shooting of Julio Lugo and in breach of that duty showed an utter indifference to, or conscious disregard of, Plaintiff's rights through the various actions taken during the investigation. However, under well-settled Illinois law, "there is no separate, independent tort of willful and wanton conduct." *Jane Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 19; *Krywin v. Chicago Transit Authority*, 238 Ill.2d 215, 235 (2010). "Rather, willful and wanton conduct is regarded as an aggravated form of negligence." *McLean*, 2012 IL 112479, ¶ 19. Accordingly, to recover for damages based on willful and wanton conduct, a

plaintiff must plead and prove the basic elements of a negligence claim in addition to alleging either a deliberate intention to harm or a conscious disregard for the plaintiff's welfare. *Id.*

Here, because there is no recognized standalone claim for willful and wanton conduct or "a duty to refrain from willful and wanton conduct" under Illinois law, Count IX does not state a claim for which relief can be granted. In *Fletcher v. Bogucki, et al.*, the Court recently dismissed such a claim on the basis that the allegation that a "duty to refrain from willful and wanton conduct in connection with the ... murder investigation" is insufficient to allege even a negligence claim aggravated by willful and wanton conduct. No. 20-CV-04768, 2021 WL 4477968, at \*8 (N.D. Ill. Sept. 30, 2021). Similarly, in this case, Plaintiff's erroneous invocation of a standalone "willful and wanton conduct" claim and failure to allege a duty recognized under Illinois law is fatal to his claim in Count IX and requires dismissal. *Id.*

### **CONCLUSION**

WHEREFORE, Defendant Judge ANDREANA TURANO MICHIELS respectfully requests this Court dismiss the Complaint against her with prejudice and order any further relief this Court deems fair and just.

Respectfully submitted,

s/ William B. Oberts  
Special State's Attorney for  
defendant, Andreana Turano

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# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Defendant Turano's Memorandum of Law in Support of Motion to Dismiss Plaintiff's Amended Complaint was served upon:

|  |  |
|--|--|
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s/ William B. Oberts  
an Attorney

# **EXHIBIT A**

1

1 RE: INVESTIGATION OF THE FATAL SHOOTING OF  
2 JOSE GARCIA

3

4

5

6

S T A T E M E N T

7

8

of

9

JUAN PARRA,

10 taken in an interview room at Area 5 Police  
11 Station, 5555 West Grand Avenue, Chicago, Cook  
12 County, Illinois, on March 24th, 1999.

13

14

15

PRESENT: MR. JAKE RUBINSTEIN,  
ASSISTANT STATE'S ATTORNEY

16

17

18

DETECTIVE SCHALK,  
STAR NO. 20718

19

20

21

Reported By: Debra L. Kelly, C.S.R.  
Illinois State License No. 084-003815

22

23

Book No. 03-2499

24

A.S.A. *JM Rubinstein* *near para* *Det R. Schalk*

1           MR. RUBINSTEIN: Let the record reflect that  
2 we are in an interview room at Area 5 Violent  
3 Crimes. Today's date is March 24th, 1999. The  
4 time is 9:15 p.m.

5           Present in the room with me, Assistant  
6 State's Attorney Jake Rubinstein, are Detective  
7 Schalk, the court reporter, and Juan Parra.

8           We are here to take the statement of  
9 Juan Parra concerning the investigation of the  
10 fatal shooting of Jose Garcia which occurred on  
11 March 22nd, 1999 at approximately 5:45 p.m. at  
12 3159 North Monticello in Chicago, Illinois.

13                           EXAMINATION

14                           BY

15                           MR. RUBINSTEIN

16           Q. Juan, I talked to you earlier and  
17 explained that I am an Assistant State's Attorney,  
18 a lawyer and prosecutor, and not your lawyer; is  
19 that correct?

20           A. Yes.

21           Q. And before we spoke, I advised you of  
22 your Constitutional rights; is that correct?

23           A. Yes.

24           Q. I'm going to read you your rights again.

A.S.A. *JMW Rubinstein*

*Sheryl Simon*

*Det. R. Schalk*



1                   Do you understand you have the right to  
2 remain silent?

3           A.    Yes.

4           Q.    Do you understand that anything you say  
5 can be used against you in a court of law?

6           A.    Yes.

7           Q.    Do you understand you have the right to  
8 talk to a lawyer and have him present with you  
9 while you are being questioned?

10          A.    Yes.

11          Q.    Do you understand if you cannot afford  
12 to hire a lawyer and you want one, a lawyer will  
13 be appointed by the Court to represent you before  
14 any questioning?

15          A.    Yes.

16          Q.    Understanding these rights, do you wish  
17 to talk to us now?

18          A.    Yes.

19          Q.    Juan, please state your name out loud  
20 and spell it for the court reporter?

21          A.    My whole name?

22          Q.    Yes.

23          A.    J-u-a-n, P-a-r-r-a.

24          Q.    Where do you live, Juan?

A.S.A. Jm Ruiz

Det. R. Schick

4018 (JMR) R.S.

- 1 A. ~~4019~~ Oakdale.
- 2 Q. And with whom do you live, Juan?
- 3 A. My father, my mother, and my two
- 4 sisters.
- 5 Q. What is your father's name?
- 6 A. Juan Parra.
- 7 Q. And what is your mother's name?
- 8 A. Luz Mora.
- 9 Q. How did you spell that?
- 10 A. M-o-r-a.
- 11 Q. And the first name is spelled L-u-z?
- 12 A. Yeah.
- 13 Q. Are you Juan Parra, Jr.?
- 14 A. Yes.
- 15 Q. Juan, how old are you?
- 16 A. 19 years old.
- 17 Q. What is your date of birth?
- 18 A. 07-27-79.
- 19 Q. July 27th, 1979?
- 20 A. Yes.
- 21 Q. Where did you go to high school?
- 22 A. To Roosevelt High School.
- 23 Q. How many years did you go to Roosevelt
- 24 High School for?

A.S.A. JMW Nulmala 2007/2008 Det. R. Silwell

1           A.    Two years.  
2           Q.    Did you finish your sophomore year  
3    there?  
4           A.    Nope.  
5           Q.    You went during your sophomore year?  
6           A.    Yes.  
7           Q.    Do you have a GED?  
8           A.    No, I don't, sir.  
9           Q.    Can you read and write English?  
10          A.    Yes.  
11          Q.    Are you a member of any gang, Juan?  
12          A.    Yes.  
13          Q.    What gang are you a member of?  
14          A.    OA's.  
15          Q.    What is the OA's?  
16          A.    It's supposed to be Orchestra Albany.  
17          Q.    Is that a Chicago street gang?  
18          A.    Yes. *(S.M.R. RS)*  
19          Q.    <sup>what</sup> ~~Was~~ rank do you hold in the OA's?  
20          A.    I'm just like a soldier.  
21          Q.    Is that the lowest rank in the OA's?  
22          A.    It's supposed to be.  
23          Q.    How long have you been a member of the  
24    OA's?

A.S.A.

*JM Melnick*

*longer in -*

*Det R. Schalk*



1 A. Like about a month ago.

2 Q. Since about a month ago?

3 A. Yes.

4 Q. Can you describe the territory of the  
5 OA's on the north side and the west side of  
6 Chicago?

7 A. One on Darwin and it's another one on  
8 Shubert, Avers, and Kosciuszko Park.

9 Q. Is Kosciuszko Park on Diversey?

10 A. On Diversey, yeah.

11 Q. Is that the area you hang out as an OA?

12 A. Yes.

13 Q. Who are the Kings?

14 A. Supposed to be rival gang.

15 Q. Are the Kings a rival gang of the OA's?

16 A. Yes.

17 Q. Are the Kings also known as the Latin  
18 Kings?

19 A. Yes.

20 Q. Are the Latin Kings and the OA's  
21 enemies?

22 A. Yes.

23 Q. Do they fight?

24 A. Yes.

A.S.A. JMW Nulindane *[Signature]* Det. R. Schell

1 Q. Where is the territory of the Kings?  
2 A. On the north side?  
3 Q. Yes.  
4 A. It's by Belmont and Pulaski.  
5 Q. I'd like now to talk about Sunday, March  
6 21st, 1999, do you remember where you were on  
7 Sunday, March 21st?  
8 A. Yes.  
9 Q. Where were you?  
10 A. In Trak Auto.  
11 Q. Is that an auto parts store?  
12 A. Yes.  
13 Q. What street is that on?  
14 A. Milwaukee and Pulaski.  
15 Q. Do you remember what time of day you  
16 were there?  
17 A. Yes.  
18 Q. Around what time?  
19 A. It was about 12:00 o'clock, close to  
20 1:00.  
21 Q. When you were at the auto parts store  
22 did you see anyone you know?  
23 A. Yes.  
24 Q. Who did you see?

A.S.A. JMW Rubinstein

John J. ...

Det. R. Schalk

1 A. I seen Sef, Eruby.

2 Q. I'm going to show you what is marked as  
3 Exhibit No. 1, it's a photograph. Who is this in  
4 this photograph?

5 A. That's Eruby, Sef.

6 Q. His first name is Eruby?

7 A. Eruby.

8 Q. Do you know him as Sef?

9 A. Yes.

10 Q. Is this the person you saw at the auto  
11 parts store on Sunday?

12 A. Yes.

13 Q. Is he a member of any gang?

14 A. Yes.

15 Q. What gang he is a member of?

16 A. OA.

17 Q. Does he hold any rank in the OA gang?

18 A. I think he does.

19 Q. <sup>what</sup> ~~Who~~ rank does he hold? *(JMR) RS*

20 A. He's not a soldier. I don't know what  
21 he holds, but he's not a soldier.

22 Q. Is he higher or lower than a soldier?

23 A. Higher.

24 Q. How long have you know Sef?

A.S.A. *JM Nulintea* *John Nulintea* *Det. R. Schick*



1           A.    I used to go to school with him, grammar  
2    school, and then he went away out of the state and  
3    he just came back.

4           Q.    Have you ever known Sef to carry guns or  
5    handle guns?

6           A.    I seen him with a gun before.

7           Q.    When you saw Sef at the auto parts store  
8    on Sunday, March 21st, did you have a conversation  
9    with him?

10          A.    Yes.

11          Q.    What did you talk about?

12          A.    Well, he was telling me about those  
13   Kings on Belmont and Pulaski going around  
14   Kosciuszko Park starting trouble with him and with  
15   the OA's that are hanging out.

16          Q.    Is Kosciuszko Park OA territory?

17          A.    I think it is.

18          Q.    Did he tell you about any specific  
19   incidents between the Kings and the OA's?

20          A.    He told me something about his nephew  
21   getting rammed by a van.

22          Q.    His nephew's car or his nephew?

23          A.    His nephew's car got hit by a van by the  
24   Kings.

A.S.A. J.W. Hulmisteau

from [unclear]

Det. R. Schall

1 Q. Did he say if he was there when this  
2 happened?

3 A. He said he was there.

4 Q. Did he mention any other incidents with  
5 the Kings?

6 A. Yes, he did.

7 Q. What other incidents did he mention?

8 A. He told me he was on Belmont and Kimball  
9 when he seen a brown Caprice and he got into it  
10 with them or something.

11 Q. Did he say who was in the brown Caprice?

12 A. He said he thinks it was the Kings.

13 Q. Do you know what he meant when he said  
14 he got into it with them?

15 A. He told me <sup>Pewee</sup> ~~he~~ broke ~~his~~ window or  
16 something.

17 Q. Did he say he broke the window on the  
18 brown Caprice?

19 A. Uh-huh, Pewee did.

20 Q. I want to talk to you now about March  
21 22nd, 1999, which is Monday, the day after you had  
22 this conversation with Sef in the auto parts  
23 store. Do you know where you were around 4:00  
24 p.m. on that day?

A.S.A. Jim Rulinsan

Man J. Allen

Det R. Schell



1           A.    4:00 p.m., I went to the park.  
2           Q.    Which park did you go to?  
3           A.    Kosciuszko Park.  
4           Q.    Who did you go there with?  
5           A.    With my friend Carlos.  
6           Q.    Did you drive there or walk there?  
7           A.    I drove over there.  
8           Q.    What car did you drive over there?  
9           A.    A Chevy Caprice.  
10          Q.    What color?  
11          A.    It's brown.  
12          Q.    Does it have any other color on it?  
13          A.    It has a blue door.  
14          Q.    Whose car is that?  
15          A.    My car.  
16          Q.    Are you the registered owner of that  
17          car?  
18          A.    Yes.  
19          Q.    Did you drive that car or did Carlos  
20          drive the car to the park?  
21          A.    I drove to the park.  
22          Q.    Carlos was a passenger?  
23          A.    Yes.  
24          Q.    What happened when you got to the park?

A.S.A. *JW Nulinski*

*For the Court*

*Det. R. S. Smith*

1           A.    When I got to the park the OA's were out  
2   there, meaning Cain, Sef, Pewee, and Carlos was  
3   there and Josari. <sup>RS</sup>

4           Q.    I'm <sup>SMR</sup>up going to show you what I have  
5   marked as Exhibit No. 2, do you know who is  
6   pictured in this photograph?

7           A.    Yes.

8           Q.    Who is that?

9           A.    Cain.

10          Q.    Is he one of the OA's that was out there  
11   in the park on Monday?

12          A.    Yes.

13          Q.    How long have you known Cain?

14          A.    I know him since like last summer.

15          Q.    Does Cain hold any rank in the OA's?

16          A.    No, he's just a soldier.

17          Q.    Have you ever known Cain to carry guns?

18          A.    Yeah, I seen him with a gun before last  
19   summer.

20          Q.    I'm going to show you now what I have  
21   marked as Exhibit 3, which is another photograph,  
22   and I'm going to ask you if you recognize the  
23   person pictured in this photograph?

24          A.    Yes.

A.S.A. JMW Rubinstein

*[Handwritten signature]*

Det. R. Schell

1 Q. Who is that?

2 A. Pewee.

3 Q. Was Pewee one of the people who was in  
4 the park on Monday, March 22nd?

5 A. Yes.

6 Q. Is Pewee also an OA?

7 A. Yes.

8 Q. How long have you known Pewee?

9 A. For like since summer too. I met him at  
10 the park.

11 Q. Did you go over and talk to these OA's  
12 in the park on Monday?

13 A. Yes, I got out and talked to them.

14 Q. What did you talk about?

15 A. When I got there they were talking about  
16 the incidents with the Kings.

17 Q. When you say incidents, what are you  
18 referring to?

19 A. About, you know, starting trouble, the  
20 Kings starting trouble with the OA's at the park.

21 Q. Who was saying what?

22 A. Sef was saying what happened to his  
23 nephew, about the car that got rammed and they  
24 were just talking about them coming around, you

A.S.A. JMW Kullmow

Francis P. Curran

Det. R. Schell



1 know.

2 Q. At some point did everyone start talking  
3 about going and getting back at the Kings for the  
4 things they had done?

5 A. Nope.

6 Q. Was there a discussion about leaving the  
7 park and going somewhere?

8 A. Yes.

9 Q. What was that discussion about?

10 A. They are talking about let's go by the  
11 Kings' neighborhood, by the Kings.

12 Q. And what did all of you say you were  
13 going to do when you went to the King's  
14 neighborhood?

15 A. We say, you know, we're going to start  
16 trouble with them.

17 Q. What do you mean by start trouble?

18 A. Like if we see a King, you know, beat  
19 them up or hit one of their cars or do something  
20 to them or something.

21 Q. Do what to their cars?

22 A. You know, ram it or something.

23 Q. If you were able to catch a King would  
24 you beat them up?

A.S.A. J.M. Rulinstein

*[Signature]*

Det. R. Schack

1 A. Me?

2 Q. The group?

3 A. Supposed to be, yeah.

4 Q. At some point did everybody decide to  
5 leave the park?

6 A. Yeah.

7 Q. How did you leave, did you leave walking  
8 or in a car?

9 A. I left in a car.

10 Q. Whose car?

11 A. My car.

12 Q. Who was driving?

13 A. I was driving.

14 Q. Who was in the front passenger seat?

15 A. Sef.

16 Q. Who was in the back seat?

17 A. Cain and Pewee.

18 Q. You mentioned earlier that a man named  
19 Carlos and a man named Josari were also at the  
20 park, did they come with you in your car?

21 A. No.

22 Q. When you got into your car where did you  
23 go?

24 A. Down Pulaski.

A.S.A. J.W. Rulinski

John R. Rulinski

Det. R. Schalle

1 Q. Towards where?

2 A. Towards Belmont.

3 Q. Why were you going to the area of  
4 Belmont and Pulaski?

5 A. To see if some Kings were out there.

6 Q. Why did you think there would be Kings  
7 in the area of Belmont and Pulaski?

8 A. That's supposed to be the Kings'  
9 territory.

10 Q. Was there any conversation about the  
11 Kings in the car on the way to Belmont and  
12 Pulaski?

13 A. Yes.

14 Q. Conversation about what?

15 A. About, you know, if you see a King start  
16 trouble with them.

17 Q. What happened when you got to the area  
18 of Belmont and Pulaski?

19 A. I turned right.

20 Q. Onto what street?

21 A. To Belmont.

22 Q. And then where did you go?

23 A. I went straight ahead past Milwaukee and  
24 then I hit Lawndale.

A.S.A. J.M. Nulins

John Farrow

Det. R. Schell



1 Q. The corner of Lawndale and what other  
2 street?

3 A. Lawndale and Pulaski -- I mean Lawndale  
4 and Belmont.

5 Q. What happened at Lawndale and Belmont?

6 A. They seen a brown Caprice. ~~A~~ Then I saw it. *SMR*

7 Q. Did they say anything when they seen the  
8 brown Caprice?

9 A. Yes.

10 Q. What did they say?

11 A. That's the Caprice going around and  
12 starting shit -- starting trouble with them.

13 Q. When I say they, I'm referring to Pewee,  
14 Cain and Sef?

15 A. Yes, Pewee, Cain, and Sef.

16 Q. Did they say that was the Kings' car,  
17 the brown Caprice?

18 A. They told me it was the King's car.

19 Q. Did they tell you to stop your car or  
20 keep on driving?

21 A. They told me to turn on Lawndale.

22 Q. Did you turn on Lawndale?

23 A. Yes, I did.

24 Q. Did you stop the car on Lawndale or did

A.S.A. *JW Nulmstein*

*Then I saw it*

*Det. R. S. Bell*

1     you keep going?

2             A.    I stopped the car.

3             Q.    What happened when you stopped the car  
4     on Lawndale?

5             A.    They got out of my car.

6             Q.    Who got out?

7             A.    Pewee, Sef, and Cain.

8             Q.    Where did they go when they got out?

9             A.    They was chasing the King's car, the  
10    brown Caprice.

11            Q.    Did you wait when they went to chase the  
12    Caprice?

13            A.    Yes, I did.

14            Q.    When they got out of the car did you see  
15    them doing anything?

16            A.    Yes, they are picking up bottles to like  
17    go after the car.

18            Q.    As you sat there on Lawndale did you  
19    hear any noises?

20            A.    Yes, I heard broken glass.

21            Q.    The sound of glass breaking?

22            A.    Uh-huh.

23            Q.    Did you see anyone throwing any bottles?

24            A.    No, cause they ran out the car.

A.S.A. JMW Rulinstein

Transcript

Det. R. Silke



1 Q. What street were they running on?

2 A. Belmont.

3 Q. Was that around the corner from where  
4 you were?

5 A. Yes.

6 Q. At some point did some of them come back  
7 to your car?

8 A. Yes.

9 Q. Who came back to your car?

10 A. Cain and Pewee.

11 Q. Did Sef come back with them?

12 A. No, he didn't.

13 Q. Did Cain and Pewee get into your car?

14 A. Yes.

15 Q. What happened when they got into your  
16 car?

17 A. They got into my car and I was like,  
18 where is Sef at.

19 Q. What did they say?

20 A. They said he's coming, reverse.

21 Q. Did you reverse?

22 A. I reversed a little.

23 Q. Did they say anything about what had  
24 happened around the corner on Belmont?

A.S.A. JMW Rulindan

May 2023

Det. R. Shalk

1 A. No, they didn't.

2 Q. What did you do after you reversed the  
3 car?

4 A. I reversed the car and they told me go  
5 through an alley cause I think Sef was going  
6 around.

7 Q. What was he going around for?

8 A. I don't know.

9 Q. Was he going to find the Kings?

10 A. I think he was still chasing the Kings.

11 Q. After they told you to pull into the  
12 alley, did you pull into the alley?

13 A. Yes, I did.

14 Q. Is that the alley between Monticello and  
15 Lawndale?

16 A. Yes.

17 Q. What did you do when you got into the  
18 alley?

19 A. I stopped like in the middle of the  
20 alley cause I was looking for Sef cause that was,  
21 you know, he was not in his neighborhood, so I  
22 made sure I was looking <sup>OUT</sup> <sup>(SMB)</sup> <sup>RS.</sup> for him.

23 Q. Did you wait for Sef?

24 A. Yes.

A-S-A. J.W. Rulinstein

Tom J. Zure

Det. R. Schell

1 Q. Did you see Sef come back to your car?

2 A. Yes.

3 Q. Was he running or walking?

4 A. He was running.

5 Q. Was he running fast or just jogging?

6 A. You could say he was running.

7 Q. Did he run up to the car?

8 A. Yeah.

9 Q. What did he do when he came up to the  
10 car?

11 A. He got in my car and I seen like a gun  
12 in his hand. That's when I knew Sef had shot somebody.  
13 *SMR* *RS*

14 Q. Before Sef came back to your car while  
15 you were waiting for him, did you hear any noises?

16 A. Yes, I hear two gunshots.

17 Q. After Sef got back in the car did you  
18 see anything in his hand?

19 A. Yes, I seen like a gun.

20 Q. What color was it?

21 A. It was black.

22 Q. What did Sef do with the gun?

23 A. He put it in his slip -- how you call  
24 that -- on his waist.

Q. In his waist?

A.S.A. JMW Hulstman

DET. R. Schell



1 A. Yeah.

2 Q. Did he say anything to you?

3 A. No, he was like he did not say

4 anything. He was just like, make a right, make a  
5 right.

6 Q. Did anyone tell you what to do, where to  
7 drive?

8 A. Well, I got to Monticello and he told me  
9 make a right, so I did make a right.

10 Q. He told you to make a right?

11 A. Uh-huh.

12 Q. Did you make a right?

13 A. Yes, I did. <sup>the wrong</sup> I was driving ~~one~~ way on Monticello, which  
14 is a one way street.

14 Q. Where did you drive to?

15 A. To Ridgeway.

16 Q. Once you got to Ridgeway where did you  
17 go?

18 A. I went to George.

19 Q. George Street. And then where did you  
20 go once you got to George Street?

21 A. I made a right down Avers. I went  
22 towards Avers.

23 Q. Where did you stop?

24 A. On Avers and George.

A.S.A. J.W. Rulinslaw

DET. R. Schell

1 Q. What happened when you stopped?

2 A. I told him get out of here, to get out  
3 of my car.

4 Q. Did they get out of your car?

5 A. Yes.

6 Q. After they got out of your car where did  
7 you go?

8 A. I went to my friend's house, Jose.

9 Q. Where does Jose live?

10 A. Lawndale and Diversey.

11 Q. What did you do when you got to Jose's  
12 house?

13 A. I beeped and he came out.

14 Q. You beeped your horn?

15 A. Yes.

16 Q. When he came out did you talk to him?

17 A. Yes.

18 Q. What did you talk about?

19 A. I told him to go by my house with me so  
20 I could drop my car off and go downtown to get my  
21 tips from my job, from the hotel I work for.

22 Q. Did he ride with you over to your house  
23 to drop off your car?

24 A. Yes.

A.S.A. JMW Nulenstein

*[Signature]*  
Det. R. Scholtz

1 Q. Did you drop off your car?

2 A. Yes.

3 Q. Then what did you do?

4 A. I went with him in his car.

5 Q. Where did you go?

6 A. To the hotel.

7 Q. What did you do when you got to the  
8 hotel?

9 A. I went inside and got my tips.

10 Q. After you did that, what did you do  
11 then?

12 A. We went back to the neighborhood and we  
13 bought some beer and we went to his house.

14 Q. What did you do at his house?

15 A. Nothing, just watched cable and drank  
16 some beer.

17 Q. When I say his house, I mean Jose's  
18 house. How long did you stay there?

19 A. Like till 11:00 o'clock.

20 Q. What happened at 11:00 o'clock?

21 A. He went and dropped me off.

22 Q. Where did he drop you off?

23 A. At my house.

24 Q. What did you do when you got home?

A.S.A. JMU Nulimane

John J. ...

DET. R. Schall



1 A. I went to sleep.

2 Q. Juan, since you have been here at the  
3 police station have the police treated you well?

4 A. Yeah.

5 Q. Have I treated you well since we have  
6 been talking today?

7 A. Yes.

8 Q. Juan, have you had the opportunity to  
9 have food since you have been at the police  
10 station?

11 A. Yes.

12 Q. What did you have to eat?

13 A. The first thing on Tuesday I had a  
14 McDonald's and pop, water, pop, water.

15 Q. What did you have other than that?

16 A. I had cookies and I had a sandwich.

17 Q. Have you also had the opportunity to  
18 drink pop and water?

19 A. Yes.

20 Q. Have you been allowed to use the  
21 bathroom whenever you needed to?

22 A. Yes.

23 Q. Have any threats been made to you in  
24 order for you to make this statement today?

A.S.A.

*AM Kulinstein*

*Juan Fernandez*

*DET. R. Schalk*

1 A. No.

2 Q. Has anyone made any promises to you in  
3 order to make this statement today?

4 A. No.

5 Q. Are you giving there statement freely  
6 and voluntarily because you want to tell the  
7 truth?

8 A. Yes.

9 Q. Are you under the effects of any drugs  
10 or alcohol right now?

11 A. No.

12 Q. What is going to happen now, Juan, is  
13 the court reporter going to take the statement you  
14 just gave and she will type it up into a written  
15 form and then you and I and the detective will sit  
16 together and read over the statement together.  
17 You have the opportunity to make any changes or  
18 corrections or additions to the statement that you  
19 want to make. Once you are satisfied with the  
20 statement, you will sign it and I'll sign it and  
21 the detective will sign it, okay?

22 A. Yes.

23

24

A.S.A. Jm Nulinslaw

Det. R. S. Ball



1           MR. RUBINSTEIN: This will conclude the  
2       statement of Juan Parra. The time is now 9:35  
3       p.m.

4           X \_\_\_\_\_

5  
6  
7       WITNESSES TO SIGNATURE:

8  
9       ASA Jan Rubinstein

10

11

12       Det. Bel Schell

13

14

15

16

17

18

19

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23

24

EXHIBIT 1



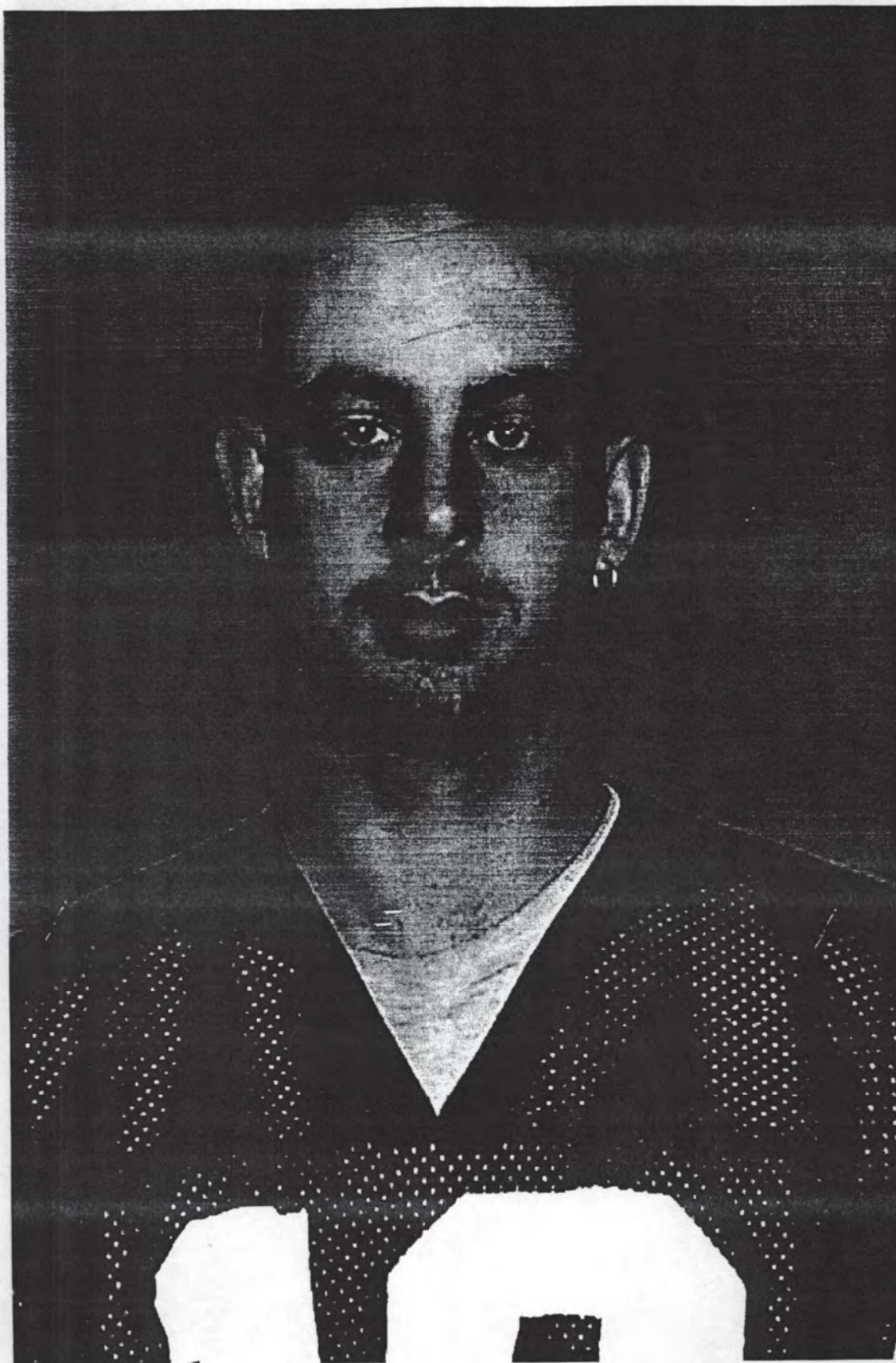
A.S.A. J.M. Melnikov

Abrego 018420

Det R. Schall



EXHIBIT 2



A.S.A. AM Nulinsane

Det. R. S. Galt

EXHIBIT 3



A-S-A. Jm Nulinstan  
Det. R. Schell

# **EXHIBIT B**



1

1 RE: INVESTIGATION OF THE DEATH OF JOSE GARCIA

2

3

4

5

S T A T E M E N T

6

7

of

8

JEREMIAH CAIN,

9

taken in an interview room at Area 5 Police

10 Station, 5555 West Grand Avenue, Chicago, Cook

11 County, Illinois, on March 24th, 1999.

12

13

14

PRESENT:

MS. NANCY NAZARIAN,  
ASSISTANT STATE'S ATTORNEY

15

16

17

DETECTIVE TONY WOJCIK,  
STAR NO. 20834

18

19

20

Reported By:

Debra L. Kelly, C.S.R.  
Illinois State License No. 084-003815

21

22

Book No.

03-2499

23

24

-----

*Jeremiah Cain ASA Nazarian April 2004*

1 MS. NAZARIAN: Let the record reflect that we  
2 are in an interview room at Area 5 Violent  
3 Crimes. Today's date is March 24th, 1999. The  
4 time is 18:35 p.m.

5 Present in the room with me, Assistant  
6 State's Attorney Nancy Nazarian, are Detective  
7 Tony Wojcik, the court reporter, and Jeremiah  
8 Cain.

9 We are here to take the statement of  
10 Jeremiah Cain concerning the investigation of the  
11 murder of Jose Garcia which occurred on March  
12 22nd, 1999 at approximately 17:45 p.m at 3159  
13 North Monticello in Chicago, Illinois.

14 EXAMINATION

15 BY

16 MS. NAZARIAN

17 Q. Jeremiah, I talked to you earlier and  
18 explained that I am an Assistant State's Attorney,  
19 a lawyer and prosecutor, and not your lawyer; is  
20 that correct?

21 A. Yes.

22 Q. And before we spoke, I advised you of  
23 your Constitutional rights; is that correct?

24 A. Yes.

*Jeremiah Cain ASA Nazarian 6.03.99 420834*

1 Q. I'm going to read you your rights again.

2 Do you understand you have the right to  
3 remain silent?

4 A. Yes.

5 Q. Do you understand that anything you say  
6 can be used against you in a court of law?

7 A. Yes.

8 Q. Do you understand you have the right to  
9 talk to a lawyer and have him present with you  
10 while you are being questioned?

11 A. Yes.

12 Q. Do you understand if you cannot afford  
13 to hire a lawyer and you want one, a lawyer will  
14 be appointed by the Court to represent you before  
15 any questioning?

16 A. Yes.

17 Q. Understanding these rights, do you wish  
18 to talk to us now?

19 A. Yes.

20 Q. What is your name?

21 A. Jeremiah Cain.

22 Q. Would you spell it for the court  
23 reporter?

24 A. J-e-r-e-m-i-a-h, C-a-i-n.

*Jeremiah Cain* *ASA Nazarian* *A. Uyl 12/3/24*



1 Q. Jeremiah, how old are you?  
2 A. 23.  
3 Q. What is your date of birth?  
4 A. 03-29-75.  
5 Q. Where do you live?  
6 A. 3935 West Diversey.  
7 Q. Who do you live with?  
8 A. My mom.  
9 Q. And what is your mom's name?  
10 A. Jane Cain.  
11 Q. Does she also go by Frances?  
12 A. Yes.  
13 Q. Can you read and write English?  
14 A. Yes.  
15 Q. What grade did you go to in school?  
16 A. Sophomore year.  
17 Q. Is that in high school?  
18 A. Yes.  
19 Q. What high school?  
20 A. Carl Schurz.  
21 Q. Do you have your GED?  
22 A. Yes.  
23 Q. When did you get your GED?  
24 A. About 1995.

1995. *2/24*

*Jane Cain ASA Nazarian C. 4/2/2021*

- 1 Q. Are you a member of a gang?
- 2 A. Yes.
- 3 Q. Which gang are you a member of?
- 4 A. The OA's.
- 5 Q. What does OA stand for?
- 6 A. Orchestra Albany.
- 7 Q. Is it fair to say they are associates
- 8 with or rivals of the Latin Kings?
- 9 A. Rivals.
- 10 Q. ~~Did~~ <sup>Do you</sup> hold a rank?
- 11 A. Yes.
- 12 Q. ~~What~~ <sup>what</sup> rank do you hold in the OA's?
- 13 A. 3rd Seat.
- 14 Q. 3rd Seat?
- 15 A. Yes.
- 16 Q. What does that mean?
- 17 A. Chief of security.
- 18 Q. As chief of security what are your
- 19 duties in the gang?
- 20 A. Hold on to all of the pistols and stuff.
- 21 Q. What does that mean?
- 22 A. I hold on to ~~them~~ <sup>the guns</sup> for them in my
- 23 apartment.
- 24 Q. Are these pistols for the gang?

for the Court ASA Nazarian 0.4.6.2024

1           A.    Yes.

2           Q.    And they're used in what way?

3           A.    For whatever they need to be used for.

4           Q.    Now, I'm showing you a picture that I

5    have marked as Exhibit A, do you recognize that

6    photograph?

7           A.    Yes.

8           Q.    Who is it a photograph of?

9           A.    Sef.

10          Q.    When you say Sef, how did you know Sef?

11          A.    From in the park.

12          Q.    Is he also a member of your gang?

13          A.    Yes.

14          Q.    How long have you known Sef?

15          A.    For a little over a year.

16          Q.    Does he hold a rank in your gang?

17          A.    Yes.

18          Q.    What is his rank?

19          A.    2nd Seat.

20          Q.    Is that higher or lower than your rank?

21          A.    Higher.

22          Q.    Does he give you orders?

23          A.    Yes.

24          Q.    Let me direct your attention to March

*Frank Coin ASA Nazarian G. 09/05/23*



1 22nd, 1999. Now, in the afternoon did you see Sef  
2 on that day?

3 A. Yes.

4 Q. Where did you see him?

5 A. In the park.

6 Q. Which park is that?

7 A. Kosciuszko Park.

8 Q. Where is that park in relation to where  
9 you live?

10 A. Across the street on Diversey.

11 Q. Now, your address, is that a house or  
12 apartment?

13 A. An apartment.

14 Q. What floor?

15 A. 3rd Floor.

16 Q. When you saw Sef in the park that day  
17 who else was with you?

18 A. Pewee and Howie was there.

19 Q. I'm showing you a photograph that I have  
20 marked as Exhibit B, do you recognize the person  
21 in that photograph?

22 A. Yes.

23 Q. Who is that a photograph of?

24 A. That's Pewee.

*Joseph Cain ASA Nizarian Q. Aug 2023*

1 Q. Did you know Pewee's real name?  
2 A. No, I don't.  
3 Q. Going back to Sef, do you know Sef's  
4 real name?  
5 A. No, I don't.  
6 Q. How long have you known Pewee for?  
7 A. Almost a year and a half.  
8 Q. Is he in your gang?  
9 A. Yes.  
10 Q. Does he hold a rank in your gang?  
11 A. No.  
12 Q. Is it fair to say he's a soldier?  
13 A. Yes.  
14 Q. Is that below you in rank?  
15 A. Yes.  
16 Q. I'm showing you a photograph that I have  
17 marked as Exhibit C, do you recognize the person  
18 in that photograph?  
19 A. Yes.  
20 Q. Who is that a picture of?  
21 A. Howie.  
22 Q. Do you know Howie's real name?  
23 A. I know his first name is Juan.  
24 Q. How long have you known Howie?

*James Cain ASA Nazarian Q. 09/05/23*



- 1 A. About a year.
- 2 Q. Where do you know him from?
- 3 A. From the park. Kosciuszko Park, where the CAs hang out. *dh*
- 4 Q. Is he also a member of your gang?
- 5 A. Yes.
- 6 Q. What rank is he?
- 7 A. He's a soldier.
- 8 Q. Same as Pewee?
- 9 A. Yes.
- 10 Q. Now, when you saw Sef and Howie and
- 11 Pewee in the park, did you have a discussion with
- 12 Sef?
- 13 A. Yes, I did.
- 14 Q. What did Sef say to you and what did you
- 15 say to Sef?
- 16 A. He said that he wanted to go for a ride
- 17 over by Belmont to see if there were any Kings
- 18 over there.
- 19 Q. Did he say anything about why he wanted
- 20 to go see if there were any Kings over there?
- 21 A. He wanted to beat them up or if he could
- 22 shoot one of them if possible.
- 23 Q. And you agreed to do that with him?
- 24 A. Yes.

*Frank Cain* *ASA Vazarian* *Aug 20 2023*

1 Q. After you agreed to do that with him,  
2 did he say anything else about going over there?

3 A. No, he just said go get the thing and  
4 we'll go over there.

5 Q. What did you understand "the thing" to  
6 mean?

7 A. The pistol.

8 Q. What pistol was that?

9 A. The 357-caliber revolver *JK NN*

10 Q. Where was that 357?

11 A. In my apartment.

12 Q. Did you go and get that gun?

13 A. Yes, I did.

14 Q. When you went to get that gun was  
15 anybody with you?

16 A. Yes.

17 Q. Who was with you?

18 A. Sef.

19 Q. I'm showing you a photo that I have  
20 marked as Exhibit D, what is that a photograph of?

21 A. The 357.

22 Q. The gun you went to go get with Sef?

23 A. Yes.

24 Q. When you went into your apartment, where

*Frank Coin ASA Nazarian R. M. 12/20/24*

1 was the gun?

2 A. In my laundry basket.

3 Q. Did you take the gun out of your laundry  
4 basket?

5 A. Yes.

6 Q. What did you do when you took it out of  
7 the laundry basket?

8 A. Handed it to Sef.

9 Q. What did he do with it?

10 A. Put it in his waistband.

11 Q. Did you see him put it in his waistband?

12 A. Yes.

13 Q. Where did the two of you go after you  
14 did that?

15 A. Went downstairs by the park into Howie's  
16 car.

17 Q. Now, you say Howie's car, where was he  
18 when you went back down there?

19 A. He was parked on Harding, right next to  
20 the park.

21 Q. Where physically was he?

22 A. In the driver's seat of the car.

23 Q. Where was Pewee?

24 A. He was standing by the car.

*Franklin*

*ASA Nazarian R. Uy 12/23/24*



1 Q. Describe the car, what did it look like?

2 A. A brown four door Caprice with tinted  
3 windows with a blue corner panel.

4 Q. What part of the car is the blue corner  
5 panel?

6 A. The front left side.

7 Q. The driver's side?

8 A. Yes.

9 Q. Did you get into that car?

10 A. Yes.

11 Q. When you got into the car, where did you  
12 sit?

13 A. In the back seat.

14 Q. Passenger or driver's side?

15 A. Passenger side.

16 Q. Where did Sef go?

17 A. He was on the front passenger side.

18 Q. And Pewee?

19 A. He sat next to me.

20 Q. In the back?

21 A. Yes.

22 Q. Did you drive in the car?

23 A. Howie was driving.

24 Q. Where did you all go?

*permitted Cain ASA Vazman L. O'Neil 12/28/24*

- 1 A. We went to Belmont. *Self said in the car that Self*  
2 Q. Which direction were you headed on *had the gun and would use it on the Kings if he had to. NN*  
3 Belmont?  
4 A. Towards Kimball.  
5 Q. Now, when you got onto Belmont towards  
6 Kimball, what happened?  
7 A. We seen another brown Caprice with 3  
8 guys in it. Pewee mentioned that those were the  
9 guys that had rammed him earlier in the week and  
10 he said they were Kings. So Howie rolled his  
11 window down and represented to them.  
12 Q. What does that mean, represented?  
13 A. *Threw NN* ~~Through~~ up a gang sign to him.  
14 Q. Would you show me?  
15 A. (Indicating). *First NN*  
16 Q. You are showing your ~~first~~ and your last  
17 fingers and your thumb are raised on your hand.  
18 The two middle fingers are bent down towards the  
19 palm; is that the sign?  
20 A. Yes.  
21 Q. Is that the sign of the Crown?  
22 A. Yes.  
23 Q. And that's the Latin King's sign?  
24 A. Yes.

*first Coin ASA Nazarian 02/28/24*



1 Q. Why did Howie throw up that sign?

2 A. To see if they would throw it up to make  
3 them think we were with them.

4 Q. After Howie did that, what did you all  
5 decide to do?

6 A. After they threw their sign up we pulled  
7 over right on the next street and as soon as they  
8 got into traffic we exited the car and approached  
9 ~~the car.~~ *other car. NH AD*

10 Q. Let me stop you there. You said they  
11 pulled into traffic, where was their car when you  
12 first saw them and what traffic did they pull  
13 into?

14 A. They were coming off of a side street  
15 making a left on Belmont towards Kimball.

16 Q. The same direction you were headed?

17 A. Yes.

18 Q. When Howie pulled the car up, who got  
19 out of the car?

20 A. Me, Pewee, and Howie got out of the car.

21 Q. What were the three of you going to go  
22 do?

23 A. Try and pull one of ~~them out of the~~ *the people out of the other car*  
24 car. Pewee threw a bottle at the window and Howie

*Frank Cain ASA Ngaram Aug. 2 2023*

1 had a bat and was going to hit the window with it  
2 but they pulled off into traffic.

3 Q. When you say you were going to pull  
4 somebody out of the car, you say they pulled in  
5 front over you on Belmont?

6 A. Yes.

7 Q. And Pewee threw a bottle at that car?

8 A. Yes.

9 Q. What happened to the car after Pewee  
10 threw the bottle?

11 A. They pulled into oncoming traffic and  
12 proceeded towards Kimball Avenue.

13 Q. At any time did you see anybody in this *other*  
14 car with a weapon? *nn*

15 A. No.

16 Q. Did they threaten you in any way?

17 A. No.

18 Q. Were you able to get anybody out of that  
19 car?

20 A. No.

21 Q. What happened after they pulled off?

22 A. We jumped back in *Howie's* *nn* *the car.* *nn* *nn*

23 Q. Howie's car?

24 A. In Howie's car.

*Frank Cain*

*ASA Nazarian July 20, 2024*

1 Q. When you jumped back in Howie's car  
2 could you see which direction the other car went?

3 A. It headed towards the Kimball direction.

4 Q. You didn't see where it went though?

5 A. No.

6 Q. When you got back into ~~the~~ <sup>Howie's</sup> car, where  
7 did you get back in the car?

8 A. In the back seat.

9 Q. The passenger side or the driver's side?

10 A. Passenger side.

11 Q. Where did Pewee get back in the car?

12 A. In the passenger, in the rear passenger  
13 side.

14 Q. What about Howie?

15 A. He was still in the driver' seat.

16 Q. While the three of you were out of the  
17 car chasing these people, chasing the car down  
18 Kimball, what was Sef doing during this time?

19 A. He was still in the car.

20 Q. Doing what?

21 A. They were on Belmont when we were  
22 chasing them.

23 Q. Okay, not Kimball, ~~the other car was on~~ <sup>the other car was on</sup> Belmont. What was  
24 Sef doing?

*Francis Cain*

*ASA Nazarian*

*A. Upt 12/24*



1 A. Waiting in the car to see if they were  
2 going to pull out a pistol. *nn*

3 Q. What was ~~he~~ *Sef* going to do if they pulled a  
4 pistol? *gun*

5 A. Exchange *gun* fire if necessary. *nn*

6 Q. When you got back in the car did Sef say  
7 anything to you when you got back into the car?

8 A. He said let's go around the block and  
9 see if we can find them on the next block.

10 Q. What did you understand that to mean?

11 A. To go over there and see if we could  
12 find ~~them~~ *that other car.* *nn*

13 Q. And do what if you found them?

14 A. Shoot at them or beat them up.

15 Q. Did you drive around to see if you could  
16 find them?

17 A. Yes.

18 Q. When you drove around did you drive  
19 around the block?

20 A. Yes.

21 Q. Did you see that car again?

22 A. Yes, we did. *We saw the other car, they did not see us.* *nn*

23 Q. When you saw that car where did you go? *nn*

24 A. Well we went around the block and we

*find* *Con* *ASA Nazarian* *09/05/2023*



1 pulled into the mouth of the alley and Sef jumped

2 out and said wait right here, I'll be right back.

3 Q. And did you drive into the alley?

4 A. Well, after he got out of the car we  
5 pulled up a little bit into the alley so no one

6 else could see us and we heard --

7 Q. Hold on, when he ~~got~~ out of the car did  
8 you see him again?

9 A. No, not for like almost two minutes.

10 Q. During those two minutes did you hear or  
11 see anything unusual?

12 A. Yes, I heard something.

13 Q. What did you hear?

14 A. I heard a few gunshots.

15 Q. Before you heard those gunshots what  
16 were you doing in the car?

17 A. I was looking out the back window.

18 Q. What were you looking for?

19 A. To see if anyone was looking at us.

20 Q. Anyone like who?

21 A. Like any pedestrians or Kings or police  
22 or anything like that.

23 Q. Now, when you heard those gunshots could  
24 you see where they were coming from?

*Printed Name* ASA Nazarian *QUP #2037*

1           A.    No, I could not.  
2           Q.    Could you see Sef?  
3           A.    No, I could not.  
4           Q.    Now, when did you see Sef again?  
5           A.    Within two minutes after ~~leaving~~ <sup>sef left</sup> the <sup>777</sup> ~~car~~ <sup>car</sup>  
6   car.  
7           Q.    Where did you see him?  
8           A.    Coming back into the car.  
9           Q.    When Sef got back into the car, did he  
10   say anything?  
11          A.    He said let's go.  
12          Q.    Was Howie still driving?  
13          A.    Yes, he was.  
14          Q.    What did Howie do?  
15          A.    He proceeded around the block to  
16   Belmont, took Belmont to Pulaski, Pulaski to  
17   Diversey to the front of my building on Diversey.  
18          Q.    During that drive after Sef got back in  
19   the car, did Sef saying anything else other than  
20   let's go?  
21          A.    No, he did not.  
22          Q.    When you got back to the apartment or in  
23   front of your apartment building, did he say  
24   anything then?

*James Cain*      *ASA Nazarian*      *6/6/23 #20837*

1           A.    Yes.  
2           Q.    What did he say?  
3           A.    He said put this pistol away.  
4           Q.    Who did he say that to?  
5           A.    To me.  
6           Q.    And did you agree to do that?  
7           A.    Yes.  
8           Q.    Did you get out of the car at that  
9 point?  
10          A.    Yes.  
11          Q.    Did anybody else get out of the car?  
12          A.    Pewee got out.  
13          Q.    Could you see where Pewee went?  
14          A.    Across the street to the Mexican  
15 restaurant.  
16          Q.    What about Howie and Sef, what did they  
17 do?  
18          A.    They drove off together.  
19          Q.    Where did you go?  
20          A.    I went upstairs to put the pistol away. That's when I  
21                noticed the gun had been fired. *nn*  
22          Q.    Where did you put it? *nn*  
23          A.    In my room.  
24          Q.    Now, the police came to your home  
earlier today, correct?

*Frank Cain*    ASA Nazarian    6/17/24 #20834



1           A.    Yes.

2           Q.    Your mom was there and you were there?

3           A.    Yes.

4           Q.    They came into your house, right?

5           A.    Yes.

6           Q.    And they asked if they could search your

7    room?

8           A.    Yes.

9           Q.    And you agreed to let them search your

10   room; is that correct?

11          A.    Yes.

12          Q.    Jeremiah, have you been treated well by

13   the police?

14          A.    Yes.

15          Q.    Have you been treated well by me, the

16   Assistant State's Attorney?

17          A.    Yes.

18          Q.    Have you had anything to eat or drink

19   since you have been here at Area 5?

20          A.    Yes.

21          Q.    What have you had to eat and drink?

22          A.    Four Cokes and a submarine sandwich.

23          Q.    Have you been allowed to use the

24   bathroom whenever you needed to?

*Jeremiah Cain   ASA Nazarian   6/14/2023*



1 A. Yes.

2 Q. Has anyone made any threats or promises  
3 to you in return for your statement?

4 A. No.

5 Q. Are you under the influence of any drugs  
6 or alcohol at this time?

7 A. No.

8 Q. The court reporter will now type up your  
9 statement. You and I will read over the statement  
10 together and you will be allowed to make any  
11 additions or corrections that you wish; do you  
12 understand that?

13 A. Yes.

14 MS. NAZARIAN: This will conclude the  
15 statement of Jeremiah Cain. The time is now 18:50  
16 p.m.

17  
18 X Jeremiah H. Cain  
19

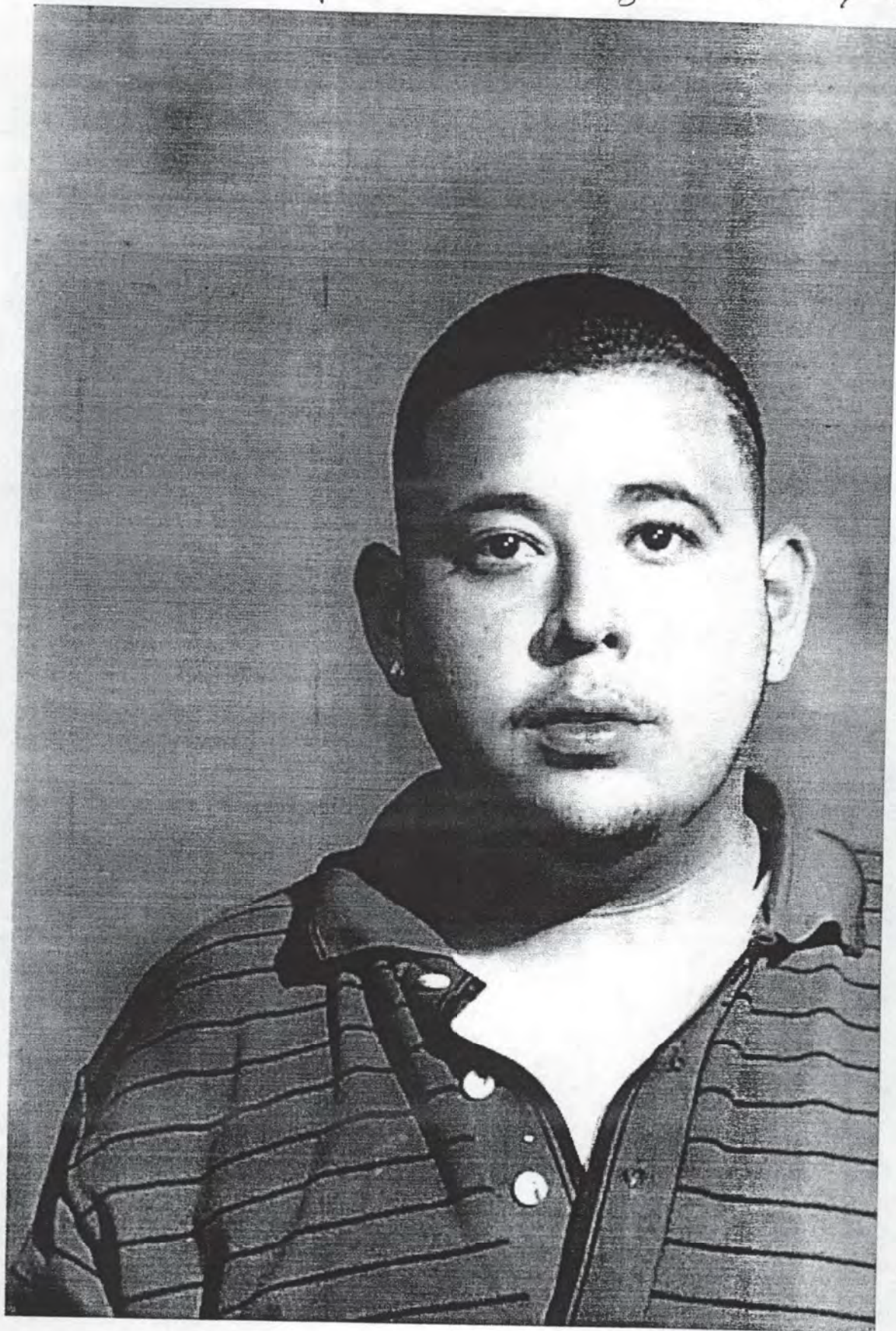
20 WITNESSES TO SIGNATURE:

21  
22 ASA Mary Nazarian  
23

24 Det. Anthony T. Diaz #20837



EXHIBIT A filed with ASA Nazam 09/05/23 10837



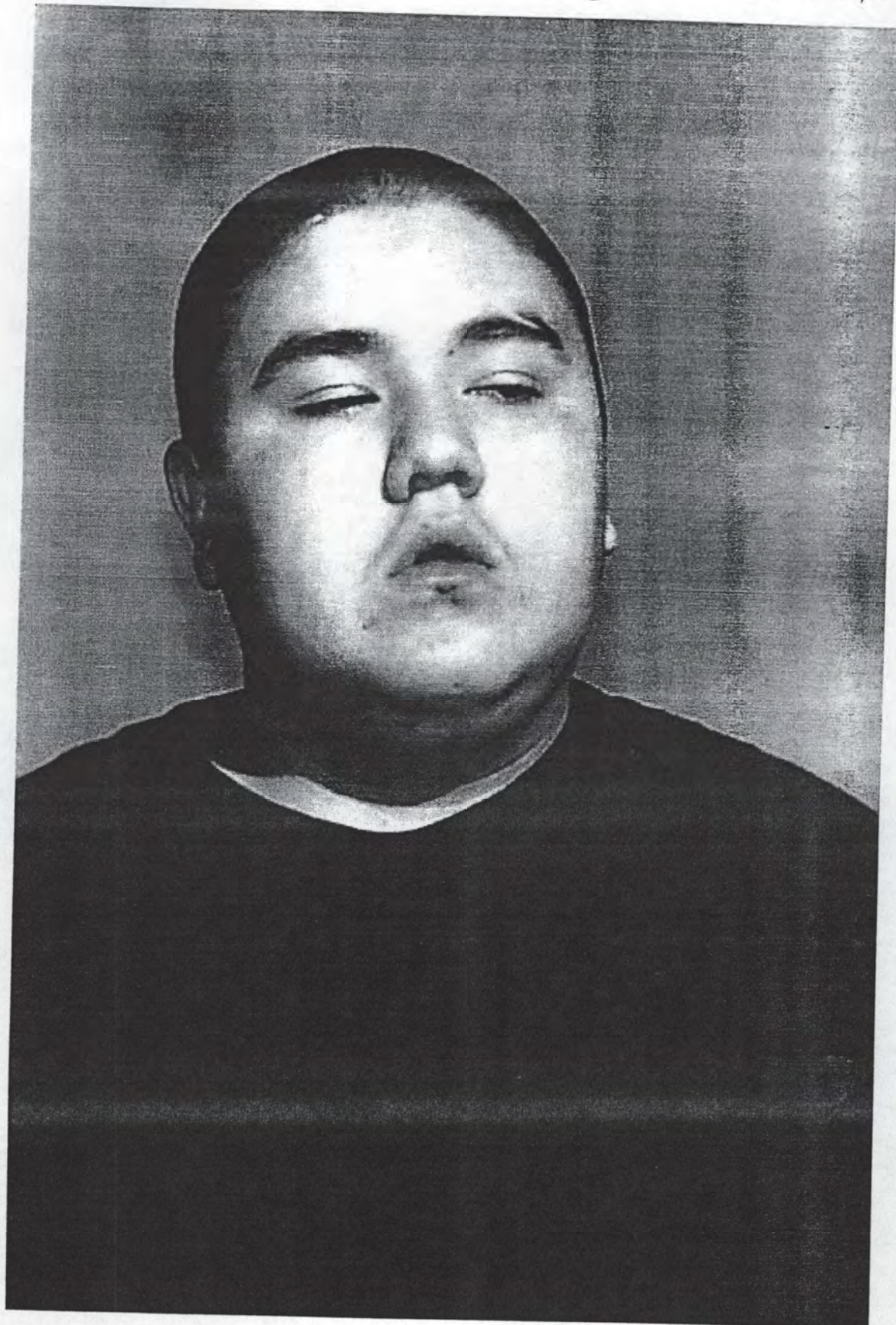




**Exhibit B** *David Cain*  
*J.P. 02-2937 ASX Nazarian*



EXHIBIT C photo of #34 Maguerra Jr. Aug 1991





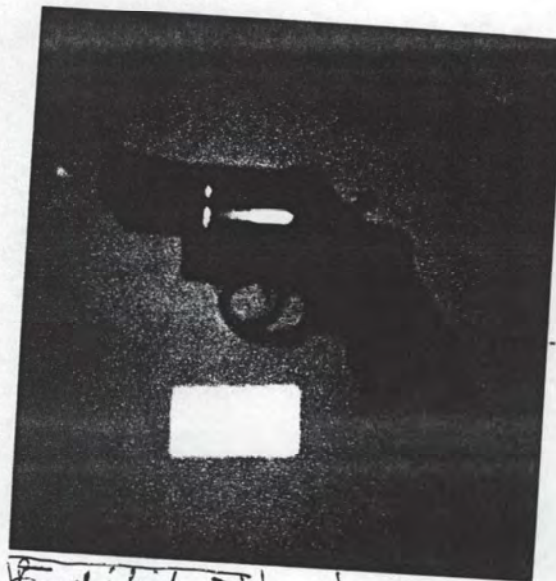


Exhibit D *Handgun*  
*Placed #137 1st*  
*Nazarian*

# EXHIBIT C

1 THE COURT: Step right up, Mr. Abrego.

2 ERUBY ABREGO,

3 called as a witness, having been first duly sworn, was  
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. EPSTEIN:

8 Q Eruby, could you please state your name, for  
9 the record?

10 A Eruby Abrego.

11 Q And how old are you, sir?

12 A I am 25.

13 Q Sir, where did you grow up?

14 A I grew up in the Logan Square area, sir.

15 Q Okay. You went to -- what high schools did  
16 you to go?

17 A I enrolled into Schurz and I enrolled into  
18 Kelvyn Park.

19 Q Okay. And you say you grew up in Logan  
20 Square. Do you still -- or did you live in Logan  
21 Square prior to going to jail?

22 A No.

23 Q Where did you live prior to that?

24 A 3635 Whipple. That's where I was staying.

1 Q And when I say that you went to jail, you  
2 have been in jail in this case, is that right?

3 A Yes.

4 Q This case only?

5 A Yes.

6 MR. REGNER: Objection.

7 THE COURT: Overruled.

8 BY MR. EPSTEIN:

9 Q After you went to high school, you lived --  
10 you moved to where you live now, is that right?

11 A Yes.

12 Q How many brothers and sisters do you have?

13 A I have one sister and a deceased brother.

14 Q And is your sister older or younger than you?

15 A She is older.

16 Q How much older?

17 A 37.

18 Q And tell me about your parents, your mother  
19 and father, do you live with then?

20 A Yes. I live with my mother.

21 Q Okay. What about your father?

22 A I don't live with my father.

23 Q Do you still have contact with your father?

24 A Yes, yes.



1 Q Sir, could you please tell us how you became  
2 involved with the gang of OA?

3 A What do you mean how did I get involved?

4 Q How old were you when you first became an OA?

5 A About 15, sir.

6 Q And why did you become a member of the OA?

7 A Peer pressure.

8 Q And describe when you say peer pressure.

9 What exactly do you mean?

10 A Because the neighborhood I lived in, you  
11 know, it was all OA gang area and all my friends were  
12 OA and it's like I was the only one that, you know, the  
13 last one to join a gang.

14 Q What about if you went in Latin King area and  
15 you weren't a member of a gang, what would happen to  
16 you?

17 A I would probably get beat up.

18 Q Did you ever get beat up by any Latin Kings  
19 or any other gangs?

20 A Oh, yes.

21 Q And this is not -- you grew up in the Belmont  
22 and Central area or at least for some time?

23 A Yes. In that general area.

24 Q Okay. So, when you joined the gang, it was

1       because of trouble with other gangs and because your  
2       friends were also in the same gang?

3             A     Right. Yes.

4             Q     Sir, I am going to turn your attention to  
5       March of 1999. Are you familiar with Kosciuszko Park?

6             A     Yes, sir.

7             Q     Okay. And what would you do on a average day  
8       in March of 1999, at Kosciuszko Park?

9             A     Basketball, you know, we got outside  
10      basketball, indoor basketball. We got tennis courts.  
11      You know, there is all types of activities to do in the  
12      park. We got an indoor pool, softball, all types of  
13      activities.

14            Q     And did you live near Kosciuszko Park in  
15      March of 1999?

16            A     No, no.

17            Q     Prior to that, did you live near Kosciuszko  
18      Park?

19            A     Yes, sir.

20            Q     I am going to turn your attention now to  
21      March 22nd of 1999. Well, actually before I do that, I  
22      want to ask you, do you know an individual by the name  
23      of Jason Rodriguez?

24            A     Yes, sir, I know him.

1 Q What is his nickname?

2 A Spirit.

3 Q What does Mr. Rodriguez look like?

4 A He is about maybe about five-eleven,  
5 dark-skinned complected. He got wavy hair.

6 Q Wavy hair? How long is his hair?

7 A Maybe about -- it's like a little longer than  
8 a crew cut, wavy hair, so you can't really tell.

9 Q Back in March of 1999, he was a member of the  
10 OA, right?

11 A Yes, he was.

12 Q Sir, I am going to turn your attention to  
13 March 20th -- 22nd of 1999. You heard some of the  
14 testimony by various people. I am going to ask you  
15 this. Were you ever in a vehicle with Nicasio Santiago  
16 and Jason Rodriguez in the area of Belmont and  
17 Monticello?

18 A No, I wasn't.

19 Q At that time, did you have -- if you weren't  
20 in the vehicle then, did you have a gun on your person  
21 on March 22nd of 1999 anywhere around Belmont and  
22 Monticello?

23 A No.

24 Q Were you ever at Belmont and Monticello

1 between the hours of 4:00 and 7:00 pm?

2 A No, sir.

3 Q And sir, more importantly, did you ever shoot  
4 at anyone between the hours of 5:00 and 7:00 pm on  
5 March 22nd of 1999?

6 A No.

7 Q Sir, how tall are you?

8 A About five-four.

9 Q And your complexion has remained the same  
10 since 1999? Did you ever go to Florida and get a dark  
11 tan?

12 A No.

13 Q And your hair is about the same as it was  
14 back in March of 1999?

15 A Except it's falling out now.

16 Q Now, on March 24th, what happened, of 1999?  
17 What happened, if anything?

18 A I was picked up at my sister's house.

19 Q Okay. And what did they do? What happened  
20 when the police arrived at your sister's house?

21 A They were trying to get in the house.

22 Q And did they ultimately get in the house?

23 A Oh, yes.

24 Q What happened when they got in the house?



1           A    They -- I guess they secured the area. Made  
2           sure that everybody was out of the rooms. They were in  
3           the rooms and took every one into the main dining room.  
4           Every one is all together.

5           Q    Okay. What -- actually, who was this at the  
6           time?

7           A    It was myself, Nicasio Santiago, my little  
8           nephew, Gilbert, my sister, Debbie Daniels, and her  
9           live-in boyfriend, Roger.

10          Q    Okay. Once the police had the area secured,  
11          where was every one?

12          A    We were all in the dining room first.

13          Q    And how did they have you?

14          A    They had me down on my knees. They had all  
15          the guys on our knees with our hands behind our heads.

16          Q    What if anything happened -- do you know who  
17          Officer Wojcik is?

18          A    At that time, I didn't know who he was.

19          Q    What did he do, if anything?

20          A    He was there.

21          Q    Okay. What did he do when he came into the  
22          house?

23          A    He was asking us, you know, who we are, you  
24          know, our names and what our nicknames are.

1 Q What happened after he asked you that?

2 A I told him who I was and --

3 Q When you say who you were, what did you tell  
4 him?

5 A I told him Eruby Abrego. And he asked me  
6 what did he call you. I told him they call me Sef.  
7 And he took me into the front of the house, which is  
8 the living room.

9 Q And what happened? What did he do with you  
10 there?

11 A He told me that I was in big trouble and that  
12 I know what I did.

13 Q And what happened after that, after he told  
14 you that? What happened?

15 A I told him I didn't know what he was talking  
16 about.

17 Q And what did he do when you said that?

18 A He struck me twice in the face with an open  
19 hand.

20 Q He slapped you twice?

21 A Yes. Twice. One and then back with the back  
22 end.

23 Q Back hand and his forehand?

24 A Yes.

1 Q Was it hard or was it just wake up?

2 A No. It was hard. It was hard.

3 Q Sir, what happened after that occurred?

4 A They cuffed me up, get ready to take me, I  
5 guess to the police station.

6 Q Okay. And did you arrive at the police  
7 station?

8 A Yes, I did.

9 Q And where did they put you?

10 A Well, they walked me through the back of it,  
11 you know, Grand and Central, big police station.  
12 Walked me to the back of all the stairs. Brought me  
13 into where there is a bunch of computers and brought me  
14 in a little room, a bunch of little rooms, but they put  
15 me in one certain room.

16 Q And sir, could you describe what the room  
17 looked like?

18 A It was -- I don't know the size, but I know  
19 it was -- probably -- first, you know, a little maybe  
20 like two feet on each side, you could probably touch  
21 the walls. And it was probably about eight feet.  
22 Maybe the other way.

23 THE COURT: Indicating he extended his arms  
24 to both sides.

AAAA- 70

1 BY MR. EPSTEIN:

2 Q About two feet on each side, Judge.

3 A With a little bench, with a little rail that  
4 goes from as long as the bench, a little rail up on  
5 top.

6 Q And sir, describe for the jury how wide was  
7 the chair of the bench.

8 A The bench, I would say about eight inches.

9 Q Okay. And the rail, where did that run along  
10 the bench?

11 A The rail, more like a raise, but it was just  
12 like a big tube that, you know, went into the wall on  
13 both sides, curved into the wall.

14 Q And were you handcuffed at the time?

15 A Oh, yes. As soon as I got, there, they  
16 cuffed me to the bar and I sat on the little bench that  
17 I was sitting on.

18 Q Okay. So, when you first got there, was it  
19 uncomfortable?

20 A Yes.

21 Q And how long was it before you became sleepy,  
22 if you became sleepy?

23 A I was tired. Yes. I -- I couldn't sleep.

24 Q What time -- let me ask you this: What time



1 did they arrest you?

2 A I would say maybe about 9:00 to 10:30. I was  
3 in bed when I heard then coming in.

4 Q 9:00 to 10:30 at night?

5 A No. In the morning when they came to arrest  
6 me.

7 Q They took you to the police station and you  
8 sat in there. How long -- well, is there any clocks or  
9 anything to that effect?

10 A No. Ain't no clocks. Nothing but one  
11 solid-colored wall.

12 Q Okay.

13 A No window. No nothing.

14 Q All right. How long was it before anybody  
15 came in, if you can guesstimate?

16 A I would say about maybe an hour and a half.

17 Q Okay. It might have been longer. It might  
18 have been shorter because you have no way of telling  
19 time?

20 A Right. Right.

21 Q Who came in?

22 A Three detectives.

23 Q And what did they say or do when you came in?

24 A Asking me questions. And, you know, I just

1       kept telling then that I didn't know what they were  
2       talking about. I didn't know what was going on. I  
3       told then I didn't even know why I am here.

4               Q     Okay. What if anything did they do in  
5       response?

6               A     They didn't believe me, if that's what your  
7       asking. They didn't believe me.

8               Q     And did they -- at some point, they left or  
9       did they stay further?

10              A     They all left.

11              Q     Okay. And how long was it, if you can  
12       estimate, for the next officer came in?

13              A     About 15 minutes, maybe 20 minutes. One of  
14       then circled right back and came in the interrogation  
15       room with me.

16              Q     Do you remember who it was?

17              A     Now, I know who he is. At the time, I didn't  
18       know. But you know, he had his -- Tony Wojcik.

19              Q     All right. And that was the officer that  
20       testified here on the stand in your trial?

21              A     Yes.

22              Q     And what if anything did he do at the time?

23              A     He started asking me more about, you know, to  
24       let him know what I had did, if I had did anything, you

1 know? Like I kept telling him, I don't know what your  
2 talking about. You know? He got mad. He called me a  
3 liar, you know? Started swinging. Started, you know,  
4 beating on me.

5 Q Where was he punching you?

6 A On my upper body, you know? Arms, chest,  
7 ribs, back, you know? Just swinging, like I was a  
8 punching bag.

9 Q Were you handcuffed at the time?

10 A Yes.

11 Q And so, your arm is handcuffed to the wall  
12 and he was punching you in the stomach and the back?

13 A Yes.

14 Q Did that cause your body to flash about a  
15 lot?

16 A Yes, it did.

17 Q Did that -- because you were handcuffed, did  
18 you get bruises on you are arm?

19 A Yes. From being jerked around because they  
20 were tight.

21 Q What if anything -- how long did he hit on  
22 you?

23 A Maybe about 20 punches, 25, at the most. I  
24 am not too sure. But I know, you know, I was getting

1 hit.

2 Q Was it hard?

3 A Yes.

4 Q Was each one hard or was just one hard and  
5 the rest were soft?

6 A First few ones were hard. Caught me off  
7 guard, knocked the wind out. And the rest, you know,  
8 after I got the -- first one, I didn't feel no more.  
9 Man, I was numb, after the first few.

10 Q You didn't feel any more and you were being  
11 hit, but you didn't feel it any more?

12 A Right. Right.

13 Q And how long in time, if you can recall, did  
14 he remain in the room on that visit?

15 A After that, he just left out.

16 Q When he left, did you feel sore?

17 A Yes, I was sore.

18 Q Well, how long was it before somebody else  
19 came and visited you?

20 A Maybe later on that night. I couldn't tell  
21 what time. You know, there was no window. I couldn't  
22 see no sun. I don't know.

23 Q Was it hours?

24 A Maybe a few hours.



1 Q And who came in to see you the next time?

2 A Officer Wojcik.

3 Q And what did he do at that time?

4 A Kept interrogating me about, you know, what  
5 is going on and comes in there and came in there with  
6 some statements. And shows me, say look, I want you to  
7 look at this, look at your friends are saying. So, you  
8 know, I got to read to then. You know, he let me read  
9 then, both of then.

10 Q And what happened after he left those  
11 statements you with?

12 A I read then.

13 Q And did he return or --

14 A Yes. He returned and grabbed then.

15 Q What did he do then?

16 A He left.

17 Q How long was it before somebody returned to  
18 speak to you again? You can estimate. Your best  
19 estimate.

20 A Maybe night time. I don't know.

21 Q Your not sure?

22 A I am not sure.

23 Q It was some time that --

24 A I just don't.

1 Q You lost track of time at some point?

2 A Right. I was getting pulled out the room to  
3 go here and, you know, to go to the lineup at one time.  
4 All that, you know? A lot of stuff going on.

5 Q Okay. When the next person came in, what if  
6 anything happened?

7 A Okay. I had -- before he came in, I was  
8 hollering because I was cuffed, for me to use the  
9 washroom. And they wouldn't let me use the washroom.  
10 So, I took it upon myself to use the washroom, you  
11 know, where I was at.

12 Q Was it a long time before?

13 A Yes. About -- I had got there morning. It  
14 had to be late night.

15 Q Were you at the point of peeing on yourself?

16 A Yes, yes.

17 Q You peed on the floor because you didn't want  
18 to pee in your pants?

19 A Right. Yes.

20 Q And what happened when detective -- strike  
21 that.

22 Did Detective Wojcik see this?

23 A Yes. He came in because I kept hollering,  
24 you know, I want to use the washroom. No one come and

1 let me out of the room.

2 Q When he came in and saw, what did he see?

3 A He seen urine on the floor.

4 Q What did he say?

5 A He snapped.

6 Q What did he do?

7 A He beat on me some more.

8 Q Sir, what occurred after you -- what if  
9 anything occurred?

10 A I don't understand.

11 Q You had said that you had gone to a lineup  
12 and I was asking you what happened after that, if  
13 anything? He took you back to investigate, that same  
14 room?

15 A Yes.

16 Q Handcuffed you to the same bar?

17 A Yes.

18 Q And how long, if you can guesstimate, do you  
19 know that you were there after that?

20 A In that room? About three hours because when  
21 I was complaining, I was telling -- no, there is urine  
22 on the floor, you know, can they move me.

23 Q Okay. What happened -- did you at some point  
24 speak to a state's attorney?

1 A Yes, I did.

2 Q Before you talked to the state's attorney,  
3 though, who if anyone spoke to you?

4 A Can you please repeat that question?

5 Q Before you spoke to the state's attorney  
6 while you were in the interview room, who if anyone  
7 spoke to you?

8 A Mr. Wojcik.

9 Q And what did he say at that time?

10 A That he is asking me, you know, are you going  
11 to tell me what I want to hear.

12 Q What were you saying?

13 A Man, I was scared. I am tired of getting  
14 beat and tired of being in this room. You know, I  
15 don't know what time it is.

16 Q How many times did he beat on you in total?

17 A Twice.

18 Q He came in twice?

19 A Two separate times.

20 Q And I interrupted you. He was saying -- your  
21 going to go along with this and your saying --

22 A Right. You are going along -- remember, I  
23 said I read the statements, so I already knew what they  
24 said.



1 Q And what was he saying with respect to those  
2 statements?

3 A For me to, you know, go off of what their  
4 statements say, you know?

5 Q And what did he ask you to do anything? What  
6 if anything did he ask?

7 A Just to say, you know, what I got to say.

8 Q What did you understand that to mean, say  
9 what you got to say?

10 A To say that I had committed that crime.

11 Q And what if anything did you tell him?

12 A I told him whatever he wanted to hear. I  
13 thought he was going to beat on me some more.

14 Q Now, at some point, Officer Smith came in and  
15 spoke with you, is that right?

16 A Yes. The man that was just up here?

17 Q Yes.

18 A Yes.

19 Q And why did he come in and visit you, if you  
20 know?

21 A Because I kept telling him that I was in the  
22 park and that he seen me. He seen me in the park. You  
23 can ask him.

24 Q When you say he saw you, who saw you?

1           A    Officer Smith. He seen me inside the field  
2           house at that time, you know? Because it's a park.  
3           Once your in the field house, you can't see out into  
4           the park.

5           Q    So, Officer Wojcik didn't believe that?

6           A    No, he didn't.

7           Q    When you told him that you were in the park,  
8           what did he say -- or did he do?

9           A    He said I was lying.

10          Q    Now, I want to take you a little forward a  
11          little bit to the time you were talking to the state's  
12          attorney. At some point, you were speaking with the  
13          state's attorney?

14          A    Yes, I was.

15          Q    Who was in the room with you with the state's  
16          attorney?

17          A    Detective Wojcik and another detective.

18          Q    And do you know who that detective is?

19          A    No, I don't.

20          Q    And with respect to your statement, you  
21          ultimately signed a statement, is that right?

22          A    Yes.

23          Q    Why did you sign the statement?

24          A    I was scared, hungry.

1 Q What were you afraid of?

2 A Getting beat.

3 Q The statement that you gave, you included  
4 some facts that weren't correct, right?

5 A Yes.

6 Q And why did you do that?

7 A So that could be like a flaw, you know, that  
8 is not true.

9 Q The state's attorney was there. Why didn't  
10 you tell her that the officer was beating you?

11 A Because I was scared.

12 Q You trust the state's attorney?

13 A No.

14 Q You spoke to an attorney Dan Gallagher later,  
15 right? You saw the attorney that testified a couple of  
16 days ago?

17 A Yes.

18 Q He was the public defender assigned to you at  
19 bond court, right?

20 A Right.

21 Q How long in total did you even know Mr.  
22 Gallagher?

23 A I met him maybe 20-30 minutes before I went  
24 out in front of the bond Judge.

1 Q Did you ever see him again?

2 A No, I didn't.

3 Q And what did you tell Dan Gallagher?

4 A Well, as soon as I got here, I told him, you  
5 know, that I was beaten. And he told me, you know,  
6 show if I had any markings and I showed him my  
7 markings.

8 Q What did you do in court, if anything? Did  
9 you show anything in court?

10 A When I went into the court, yes, I lifted up  
11 my shirt and showed everybody.

12 Q Do you recall if Mr. Gallagher was looking at  
13 you while he was speaking to the Judge?

14 A Yes. He seen all my cuts and bruises and  
15 stuff like that.

16 Q Sir, after that, after they take you to bond  
17 court and then they process you in the jail?

18 A Yes.

19 Q And then you go through a medical exam,  
20 right?

21 A All type of exams, yes.

22 Q And do you recall Mr. Loveless testified, I  
23 believe, it was yesterday, do you remember him?

24 A Yes.



1 Q Okay. And what if anything did you tell Mr.  
2 Loveless?

3 A I had told him that I was vomiting blood and  
4 that I was beaten.

5 Q And what did he did after you told him that?

6 A He wrote something down.

7 Q Who did you see after that? Do you recall  
8 who you saw after Mr. Loveless? Did you go with the  
9 rest of the inmates or did you go somewhere else to  
10 talk to somebody or anyone else?

11 A There was like different sections you stop  
12 at. They take blood here and they do this, they take  
13 your picture, they examine you. The other ones do  
14 other things.

15 Q Okay. Now, Eruby, I want to talk to you  
16 about the -- Nicasio Santiago. You know who he is,  
17 right?

18 A Yes.

19 Q And how do you know him?

20 A He been living in the neighborhood over there  
21 all his life.

22 Q And is he in the gang that your in?

23 A Yes, he is.

24 Q And is your best friend? Is he a buddy?

1 Acquaintance? How would you describe your relationship  
2 with Mr. Santiago?

3 A He is an acquaintance. He is an acquaintance  
4 because of the gang.

5 Q And how many people are in the OA?

6 A Total?

7 Q Right.

8 A About 50.

9 Q 50 right there where you are at?

10 A No. In total, the whole shebang, yes, about  
11 50.

12 Q Mr. Abrego, when you were at the park on  
13 March 22nd of 1999, at approximately 6:45, between 5:00  
14 and 7:00 -- or let me ask you this. Did you see Jason  
15 Rodriguez at all between the hours of 5:00 and 7:00 pm?

16 A No.

17 Q Did you see Nicasio Santiago between 5:00 and  
18 7:00 pm --

19 A No, I didn't.

20 Q -- at the park or anywhere near there?

21 Do you know -- you saw Julio Lugo  
22 testify?

23 A Yes.

24 Q Did you see him on March 22nd of 1999?

1 A No, I didn't.

2 Q And what about Ramon Torres?

3 A No.

4 Q And Fred Marrero, had you seen him then?

5 A I hadn't seen none of then.

6 Q Now, sir, in late 2003, the -- you had  
7 your -- some new prints taken of your palms?

8 A Yes.

9 Q They had taken your fingerprints when you  
10 first got arrested?

11 A Yes.

12 Q And then later in late 2003, last year, they  
13 took your palm prints?

14 A Yes, they took my palm prints, the whole  
15 side, everything.

16 Q And you hadn't done that previously?

17 A No.

18 Q Mr. Abrego, obviously, you know that your  
19 charged with a serious crime. I am going to ask you  
20 again, did you fire a gun at a person by the name of  
21 Mr. Garcia or Julio Lugo on March 22nd, 1999?

22 A No.

23 Q Were you with a lookout for somebody else who  
24 fired a gun on March 22nd, 1999?

1 A No, I wasn't.

2 Q Were you even aware that anybody was out  
3 doing such a thing on March 22nd, 1999?

4 A No.

5 MR. EPSTEIN: I have no further questions.

6 THE COURT: Recess for five minutes and then  
7 we will take cross examination.

8 If your looking at an hour of cross,  
9 I am breaking for lunch now.

10 MR. REGNER: Let's break. We will break,  
11 your Honor.

12 THE COURT: All right. Tell the jury we are  
13 going to take then to lunch now and we will resume  
14 after lunch, 2:00 o'clock.

15 MR. HOOD: Two things on the record.

16 THE COURT: Yes.

17 MR. HOOD: One is that throughout the  
18 pendency of this trial, Mr. Epstein has -- countless  
19 times said there is no defensive alibi, clearly putting  
20 his client on the stand and elicits the fact that he  
21 was at Koz Park during the shooting.

22 The other thing is, for the record, I  
23 believe he violated the Flacks (Phonetic) motion, when  
24 he said have you been in jail, and on this case, but



1 nothing else.

2 MR. EPSTEIN: Can I respond?

3 MR. HOOD: First, we would ask his testimony  
4 be stricken. He put in an alibi that he -- we have  
5 asked 50 times if we have asked once and he always said  
6 reasonable doubt. No alibi.

7 THE COURT: Denied. You can cross him on all  
8 those issues.

9 MR. EPSTEIN: Briefly, for the record, I  
10 never asked him was he at Koz Park at the time of the  
11 shooting. I did point out he was at Koz Park at the  
12 time that Mr. Smith said. It's not an alibi. They  
13 have to show it's circumstantial to the fact he has to  
14 have time to get there. Specifically, Judge, with  
15 respect to the fact that he was in jail because other  
16 witnesses brought out the fact that he was in jail, I  
17 didn't want the jury to assume he was in jail on other  
18 charges, which would be --

19 THE COURT: I am not getting into that.

20 MR. EPSTEIN: One final issue.

21 THE COURT: It was a slick way of getting  
22 around it. I know it. You know it. Everybody knows  
23 it and I am looking the other way. So, you know, your  
24 ahead right now. Don't push that issue.

1 MR. EPSTEIN: There is one issue. It's  
2 completely a different issue.

3 Elizabeth Montalvo. We never crossed  
4 that bridge. Apparently, I waited as long as I could  
5 to see if she was going to appear in the custody of the  
6 police. She hasn't appeared. I ask that in my motion  
7 that I filed a month or two ago be -- the request was  
8 to admit her testimony. We could do this after lunch,  
9 if you wish. I wanted to bring it up. It's something  
10 I want to do, to admit her testimony outside of her  
11 hearsay statements which were denied in the chambers  
12 hearing.

13 THE COURT: That will be denied. I already  
14 barred her testimony pursuant to the chambers issue. I  
15 rethought her position. I would have re-assessed it in  
16 fact she would have been here. She is not here. I  
17 don't really know that she was actually re-subpoenaed  
18 for trial, but I went ahead and issued a warrant any  
19 way. And if she comes in, I will deal with that issue  
20 of whether she is really in contempt of court at that  
21 time. Because in fact, she might not be. But be that  
22 as it may, I am not putting in any portions of her  
23 testimony through transcript in this trial.

24 Denied. Request denied.

1 Darryl Hawkins, can we ship him back.

2 MR. HOOD: We are done with him.

3 THE COURT: No longer needed. Santiago, do  
4 we still need him?

5 MR. EPSTEIN: Well, that depends on the  
6 rebuttal of the State. Actually, on Darryl Hawkins,  
7 Judge, I would ask both of them wait until the end of  
8 the case.

9 THE COURT: Hawkins is gone. Santiago, we  
10 will hold.

11 (Whereupon a lunch recess was had  
12 and the proceedings continued as  
13 follows.)

14 Mr. Abrego, you can retake the witness  
15 stand.

16 And bring out the jury.

17 You can be seated.

18 Okay. Every one could be seated.

19 Cross examination?

20 MR. REGNER: Thank you.

21 CROSS EXAMINATION

22 BY

23 MR. REGNER:

24 Q Your an OA street gang member?

AAAA- 90

1 A Yes, sir.

2 Q You have been one for ten years?

3 A Yes.

4 Q In March of 1999, you had a territory by Koz

5 Park?

6 A I didn't understand the question.

7 Q The street gang had a territory by Koz Park?

8 A Yes.

9 Q What were the geographic boundaries?

10 A The park.

11 Q There were six square blocks?

12 A Yes.

13 Q Including the park by Diversey?

14 A Yes.

15 Q And at that time, your nickname was Sef?

16 A Yes, it was.

17 Q And you go by that today?

18 A Yes.

19 Q And as you sit here today, you are still an

20 OA street gang member?

21 A Yes.

22 Q And that carries on to where you are now?

23 A Yes.

24 Q And you still control things as an A0 street



1 gang member where you are now?

2 A No, sir.

3 Q Tell us how the gang works, Eruby.

4 A As far as what do you mean how it works?

5 Q Well, this is the gang that it's -- the  
6 business of the gang is to hang out, right?

7 A Hang out, you know.

8 Q And in March of 1999, you were hanging out in  
9 the park, right?

10 A Yes.

11 Q You weren't working?

12 A No. I was playing hoops.

13 Q Having meetings?

14 A No.

15 Q Where were the meetings?

16 A Anywhere. Park.

17 Q Did you have big meetings?

18 A I didn't really participate in big meetings.

19 Q Small meetings?

20 A Small meetings.

21 Q Show us what the Orchestra Albany symbol is.

22 MR. EPSTEIN: Objection.

23 THE COURT: The Defendant has demonstrated  
24 that symbol.

1 BY MR. REGNER:

2 Q What is disrespect?

3 A Being flipped.

4 Q What does flipping mean?

5 A Flipping the symbol, the gang symbol.

6 Q When somebody does that to you, what does it  
7 mean?

8 A It means disrespect.

9 Q Flip the OA symbol?

10 Who are your rivals -- strike that?

11 THE COURT: Demonstrated by the defendant.

12 THE WITNESS: Really everybody, really.

13 BY MR. REGNER:

14 Q In March 22nd 1999, you lived at 3626 North  
15 Whipple, correct?

16 A Yes.

17 Q Belmont and Monticello is Latin King  
18 territory, right?

19 A From my understanding, yes.

20 Q They are your rivals?

21 A Yes.

22 Q You hate those guys?

23 A Yes.

24 Q Now, in the gang, besides signs and meetings,

1           you have colors, right?

2           A     Yes, we do.

3           MR. EPSTEIN: Judge, I can't see the witness.

4           THE COURT: Move over.

5           BY MR. REGNER:

6           Q     What are the colors?

7           A     Brown and yellow.

8           Q     And during that time, in March 22nd, 1999 in  
9           particular, you were wearing colors, right?

10          A     March 22nd?

11          Q     Yes.

12          A     No.

13          Q     You were wearing colors all month, right?

14          A     No.

15          Q     Your colors are brown and gold?

16          A     Right. They are.

17          Q     And that's your gang uniform?

18          A     It doesn't mean I wear it every day.

19          Q     In March 22nd 1999, you had rank in the gang.

20          You know what that means, right?

21          A     I know what rank means, but I didn't have no  
22          rank.

23          Q     What does rank mean?

24          A     Someone with a position.

1 Q You were second chief?

2 A No, I wasn't.

3 Q Did you hear Nicasio Santiago say you were  
4 yesterday?

5 A No.

6 MR. EPSTEIN: Misstatement of the testimony,  
7 Judge.

8 THE COURT: Sustained.

9 BY MR. REGNER:

10 Q Now, you and the Latin Kings are always in  
11 opposition, isn't that right?

12 A Not always.

13 Q When do you and the Latin Kings get along?

14 A If someone, you know, if someone knows one of  
15 then, you know, and they are one of the guys' family  
16 members or friends, then there is never no problems.  
17 But if they don't know then, that's when they don't get  
18 along.

19 Q OAs are Peoples -- or OAs are folks?

20 A Yes, sir.

21 Q And Latin Kings are Peoples?

22 A Right.

23 Q Now, in the gang, what is a violation?

24 A When you get beat up for something.

1 Q And who does -- who administers that?

2 A Usually, first seats in the gangs, which are  
3 called governors.

4 Q When one gang member testifies against a  
5 fellow gang member, that's a cause for a violation,  
6 isn't it?

7 A Yes. If he is still a member.

8 Q What is an nation gun?

9 A A gun that -- it's in the neighborhood, a  
10 neighborhood gun.

11 Q And who keeps that gun in the neighborhood?

12 A I wouldn't know.

13 Q The OA had a nation gun?

14 A Yes.

15 Q And they bought it from -- you had something  
16 to do with buying it, isn't that right?

17 A No.

18 Q You know Tony Vasquez?

19 A Yes. I seen him before.

20 Q You met him before?

21 A Yes.

22 Q He has seen you?

23 A Yes. He is a drug addict. Always out on the  
24 street.



1 Q Right.

2 And while -- times you have seen him,  
3 you were with Gilbert, your nephew?

4 A I would be with a bunch of people.

5 Q Gilbert was an OA street gang member?

6 A Yes, he was.

7 Q And Jeremiah Cane?

8 A I seen him with Jeremiah Cane? I didn't  
9 understand.

10 Q You have been Jeremiah Cane when you have  
11 seen Tony Vasquez, right?

12 A Not.

13 Q You have been with Nicasio Santiago when you  
14 have scene Tony Vasquez?

15 A No.

16 Q In March -- on the 22nd of March, 1999, the  
17 OA street gang that you belonged to had a nation gun,  
18 isn't that right?

19 MR. EPSTEIN: Objection, asked and answered.

20 THE COURT: Overruled.

21 THE WITNESS: What was the question?

22 BY MR. REGNER:

23 Q On March 22nd 1999, your gang had a nation  
24 gun, right?

1 A Yes.

2 Q And that gun was a 357-Magnum?

3 A I would guess yes.

4 Q Six-shot?

5 A Yes.

6 Q It was bought at a gun shop?

7 A I don't know where it was bought.

8 Q Tony got that gun, right?

9 A I have no idea.

10 Q You and Nicasio got those guns from Tony,  
11 right?

12 MR. EPSTEIN: Objection as to what Nicasio  
13 has.

14 THE COURT: Overruled. If he understands.

15 THE WITNESS: I didn't understand.

16 THE COURT: Rephrase it.

17 BY MR. REGNER:

18 Q You and Nicasio got those guns, right?

19 A Me and Nicasio?

20 Q Yes. Nicasio Santiago got those guns for you  
21 from Tony?

22 A No. He didn't get no guns from me.

23 Q You gave a court-reported statement in this  
24 case, isn't that right?

1 A Yes.

2 Q And you have been shown it today, I believe,  
3 have you?

4 A Yes, I have been.

5 Q Okay. Showing you what defense has been  
6 marked as People's Exhibit 19A through F.

7 Approaching the witness, your Honor?

8 THE COURT: Yes. Go ahead.

9 BY MR. REGNER:

10 Q This is the court-reported statement?

11 A Yes, it is.

12 Q Take a moment and look at it. Is that your  
13 statement?

14 A Yes.

15 Q Your signature is on each and every page of  
16 that statement?

17 A Each and every page.

18 Q And in fact, everything that's in that  
19 statement, you were asked questions and you gave those  
20 answers, correct?

21 A Yes.

22 Q And after that statement was done, you went  
23 through that statement line by line with the assistant  
24 state's attorney, didn't you?

1 A Yes.

2 Q At the time you did that, you made  
3 corrections, isn't that right?

4 A Yes.

5 Q And you initialed those corrections in your  
6 own, hand?

7 A Yes, I did.

8 Q And you identified all the photographs in  
9 that statement?

10 A Yes.

11 Q Everything in this statement you said?

12 A Yes. It's all a lie.

13 Q When you gave the statement, it was you, the  
14 assistant state's attorney and Detective Jerome Bogucki  
15 that was here today, right?

16 A Yes. And another Detective Wojcik was there  
17 too.

18 Q Detective Wojcik was in here too?

19 A Yes. He was in the room. He didn't sign it.

20 Q You were in front of a court reporter, right?

21 A I was in front of a few people in there.

22 There was some lady. The lady asks me questions and  
23 another lady is doing what he is doing.

24 Q She doesn't work for the police?

1 THE COURT: Indicating the court reporter in  
2 the courtroom.

3 BY MR. REGNER:

4 Q Not a police officer, right?

5 A No.

6 Q You were -- no, that everything you said was  
7 being taken down, right?

8 A Yes.

9 Q You could have said anything you wanted to,  
10 right?

11 A Right.

12 Q Never said anything about any sort of  
13 beating, right?

14 A Right. Because I was scared.

15 Q In fact, what you did say is that you were  
16 treated well?

17 A Right. Because I was scared.

18 Q By the assistant state's attorney, right?

19 A Right.

20 Q And by the police?

21 A Right.

22 Q And before you took this court-reported  
23 statement, you spoke to the assistant state's attorney  
24 alone, didn't you?



1 A I don't recall that.

2 Q You saw Ms. Turano-Michiels, correct, she was  
3 in court the other day?

4 A Yes. I seen her.

5 Q At no time while she was at the station did  
6 you ever tell her anything about being beaten?

7 A No. I was scared to come forth then.

8 Q At any time you were there, did you tell her  
9 that you had any injuries anywhere?

10 A No, I didn't.

11 Q You were feeling bad?

12 A No, I didn't.

13 Q Now, you testified today that as soon as you  
14 got to the station, you were beaten, is that right?

15 A Yes, I was.

16 Q Okay. So, the first time from the get go,  
17 you went into an interview room?

18 A Not the first time. I said that three  
19 officers came inside the room and asked me some  
20 questions and I told them what I had told them and then  
21 they left and one officer came back. That's what I  
22 said.

23 Q When you went in the room?

24 A Right.

1 Q The first time, you weren't beaten at all?

2 MR. EPSTEIN: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: No, not when all three officers  
5 were in the room, no.

6 BY MR. REGNER:

7 Q A short time later, you saw Detective Wojcik  
8 returned alone?

9 A Yes.

10 Q When Detective Wojcik returned, he gave you a  
11 savage beating, right?

12 A He beat me.

13 Q About how many times?

14 A About 20 or 25 punches.

15 Q Where did he strike you? Show us.

16 A On my upper body, ribs, back, arms, you know?  
17 He was swinging.

18 Q All the way down your arms?

19 A I had one arm cuffed up. I had my right arm  
20 cuffed up and I am, you know --

21 Q So, you got your right arm cuffed?

22 A Yes.

23 Q And Detective Wojcik is hitting you with an  
24 instrument, maybe?

1 A No. No instrument.  
2 Q What is he hitting you with?  
3 A His fist.  
4 Q Where did he hit you first?  
5 A In my chest, all in my upper body.  
6 Q Where did he hit you next?  
7 A All over. You know, when you swing.  
8 Q He hit your arms?  
9 A Arms.  
10 Q And he hit your legs?  
11 A Back, chest.  
12 Q Hit your face?  
13 A No, he didn't hit my legs. He didn't hit my  
14 face then. Not that time.  
15 Q He hit your ribs, your stomach?  
16 MR. EPSTEIN: Objection, asked and answered.  
17 THE COURT: Overruled.  
18 THE WITNESS: What was that?  
19 BY MR. REGNER:  
20 Q He hit your ribs, stomach, back?  
21 A Yes.  
22 Q Did he thrash you around?  
23 A As far as beating me up, thrashing me around?  
24 Q Yes.

1 A Yes.

2 Q And all the time your flailing around while  
3 you were stuck to -- you were handcuffed to the wall?

4 A Yes, I am.

5 Q So, your going back and forth along this --

6 A No. I was just cuffed up.

7 Q And you said it was so bad, it was -- you  
8 were numb?

9 A Yes.

10 Q Bleeding at that point?

11 A No, I wasn't bleeding at that point.

12 Q Well, now some time after that, you  
13 participated in a lineup, right?

14 A Yes.

15 Q You sat next to five guys?

16 A Yes, I did.

17 Q And in that lineup -- let me show you this.

18 That lineup was taken after the  
19 savage beating, right?

20 A Yes.

21 Q You mentioned it was a few hours later, I  
22 believe or --

23 A I think it was.

24 Q Was it a few minutes?

1           A    It might have been an hour or so later,  
2   45 minutes.

3           Q    Showing Defense Counsel Exhibits 8A, 55, and  
4   54.

5                       Approaching the witness?

6                       THE COURT:   Sure.

7   BY MR. REGNER:

8           Q    Showing you what has been marked as People's  
9   Exhibit 8 for identification or has been admitted.  Is  
10   that a photograph of that lineup you took?

11          A    Yes, it is.

12          Q    That's you sitting in the lineup, right?

13          A    Yes.

14          Q    You can't see an injury on you, can you?

15          A    No, not from that -- not from the picture.

16          Q    This is another photograph from that lineup.  
17   Do you recall this picture being taken?

18                       Showing him People's Exhibit 54.

19          A    Yes.

20          Q    That's a picture of you standing, right?

21          A    Right.

22          Q    Not a mark on you, is there, in that  
23   photograph?

24          A    I got marks by my arm.  You see the marks,



1           you know?

2                       MR. REGNER: Your Honor, the witness is  
3           indicating the left arm on the photograph.

4                       THE COURT: Left arm.

5           BY MR. REGNER:

6                       Q    Showing you what is a picture of People's 55.  
7           That's another picture when that lineup was taken,  
8           right?

9                       A    Right.

10                      Q    It shows it's a fair and accurate picture of  
11           you?

12                      A    Yes.

13                      Q    Not a mark on your face, is there?

14                      A    You see on my face looks red?

15                      Q    No.

16                      A    You don't?

17                      Q    Your face isn't red there, is it?

18                      A    Look -- it looks like you could see like  
19           welts in there.

20                      MR. REGNER: Let the record reflect --

21                      THE COURT: He is pointing to the left side  
22           of his face.

23           BY MR. REGNER:

24                      Q    These photographs fairly and accurately show

1           how you looked after that lineup?

2           A     Right.

3           Q     And they showed how you looked right after  
4           that savage beating, right?

5           A     Right.

6           Q     Okay. Now, then, you said you were beaten  
7           again?

8           A     Yes, I was.

9           Q     By Detective Wojcik?

10          A     He was the only one beating me.

11          Q     Where was this now?

12          A     In the interrogation room.

13          Q     How far after -- how long after the lineup  
14          did this beating occur?

15          A     After the lineup?

16          Q     Yes.

17          A     Maybe about an hour.

18          Q     And at that time, tell us what happened.

19          A     Well, the reason he beat me is because --

20          Q     I am not asking you the reason. What  
21          happened?

22          A     I urinated on the floor because I was calling  
23          for someone to take me out to the bathroom. And like I  
24          said, no one wanted to take me to the bathroom. I am

1 cuffed, so I can't go to the door. So, you know, I  
2 pulled down my sweat pants where I was handcuffed  
3 sitting and I urinated on the floor.

4 Q I asked you about Detective Wojcik beating  
5 you. Did you understand my question?

6 A No, I didn't.

7 Q Okay. Then I will rephrase.

8 A I thought I did.

9 Q Detective Wojcik came into the interview room  
10 again you said?

11 A Right.

12 Q And you said he beat you again?

13 A Right.

14 Q Where did he beat you?

15 A All my upper body, chest.

16 Q How did he beat you?

17 A With his fists.

18 Q How many times did he hit you?

19 A 20.

20 Q Hit you in the chest?

21 A Only in the chest this time.

22 Q This went on for how long?

23 A About 25 punches, if that.

24 Q And then some time after this -- this beating

1 is when you say that's when you had -- you gave this  
2 statement, right, that you were there and you were the  
3 shooter?

4 A Yes. I had -- I was already -- I am in a  
5 little room. I am tired of being in rooms handcuffed  
6 to this wall.

7 Q Did you say you were the shooter after that?

8 A No.

9 Q After seeing Detective Wojcik.

10 A No.

11 Q At some point in time, you admitted being the  
12 shooter?

13 A Like at 4:00 in the morning, I was going  
14 crazy. I wanted -- he promised me, you know, your  
15 going to be all right, this and that. Just go along  
16 with the statements. All right. Do what you want me  
17 to do. Stop meet beating me.

18 Q So, you gave this statement that was  
19 incorporated in that court-reported statement, correct?

20 A Yes.

21 Q And this again was after the beating, right,  
22 you gave this statement?

23 A Right.

24 Q And then they paraded you in front of a court

1 reporter, right?

2 A Yes.

3 Q A civilian?

4 A Yes.

5 Q And after you gave the court-reported  
6 statement at 8:35 am on March the 26th, 1999, they took  
7 a photograph of you, right?

8 A Right.

9 Q People's 20.

10 Can I approach the witness, your  
11 Honor?

12 THE COURT: Sure.

13 BY MR. REGNER;

14 Q Showing you what has been marked as  
15 People's 20. What is that?

16 A It's a picture of me.

17 Q Is that the picture that was taken on March  
18 26th at 8:35?

19 A I would think so.

20 Q Okay. Flip it.

21 Is your signature on the back?

22 A Yes.

23 Q Did you sign that in your own hand?

24 A Yes, I did.



1 Q Does it have a time on it?

2 A 8:50.

3 Q Another photograph after your savage  
4 beatings, right?

5 A Yes.

6 Q By the way, what is the symbol of the OA  
7 street gang?

8 What about gang graffiti?

9 A What about gang graffiti?

10 Q What is the symbol or the signal of the OA  
11 street gang?

12 A An O and an A.

13 Q Showing you what has been admitted as  
14 People's 63.

15 Showing you a photograph marked 63.

16 What is that a photograph of?

17 A The OA symbol and all that.

18 Q That's the OA symbol?

19 A Yes.

20 Q That's your symbol?

21 A Yes. OA symbol.

22 Q It's a symbol that someone drew or etched in  
23 an interview room at Area 5 violent crimes, right?

24 A I guess so. You got the picture of it.

1 MR. EPSTEIN: Judge, I move to strike. This  
2 witness had no personal knowledge of what is contained  
3 in the photograph, by his own testimony.

4 THE COURT: He was asked if that was a  
5 symbol, a graffiti symbol of the OAs. He said yes.

6 BY MR. REGNER:

7 Q Now, after this savage beating and after this  
8 court-reported statement was taken and after all these  
9 photographs were taken of you, which by the way -- and  
10 show no injuries, correct?

11 A Correct.

12 Q Then you appeared in bond court, right?

13 A Right.

14 Q There you met a public defender whose job it  
15 is to respect you?

16 A Yes.

17 Q That public defender didn't take any  
18 photographs, did he?

19 A No, he didn't, but I told him.

20 Q You said that you were beaten?

21 A Yes.

22 Q But he didn't take any photographs?

23 A No, he didn't.

24 Q You lifted up your shirt?

1 A Yes, I did.

2 Q He looked at you?

3 A Yes.

4 Q Then you went through processing and met with  
5 an emergency medical technician by the name of Al  
6 Loveless right in Cermak Hospital as part of Cook  
7 County?

8 A Yes.

9 Q You told him you were beaten, right?

10 A Yes.

11 Q He didn't make any notation of it, did he?

12 MR. EPSTEIN: Objection as to what Mr.

13 Loveless --

14 THE COURT: Sustained.

15 THE WITNESS: No. I told him no, though.

16 BY MR. REGNER:

17 Q Now, on March the 25th -- or strike that.

18 March the 22nd 1999, you looked a lot  
19 different than you do today, isn't that right?

20 A Not too much different.

21 Q About 50 pounds at least heavier?

22 A About 20.

23 Q Facial hair?

24 A Yes. Still got facial hair.

1 Q At that time, you were wearing gang colors?

2 A Gang colors?

3 Q Gang colors.

4 A In that picture, no.

5 Q What is a hoodie?

6 A An hoodie is a hooded sweater.

7 Q And back then, you were hanging out at Koz  
8 Park?

9 A I didn't understand you?

10 MR. EPSTEIN: Objection.

11 MR. REGNER: Strike that.

12 THE COURT: Sustained.

13 BY MR. REGNER:

14 Q March the -- the month of March of 1999, you  
15 were hanging out at Koz Park, right?

16 A Yes, playing basketball.

17 Q Outside?

18 A Right.

19 Q Every day?

20 A Yes.

21 Q Showing you again 54 and 55, these are  
22 photographs that showed what you looked like back then,  
23 right?

24 A Yes.

1 Q You don't look like that now, do you?

2 MR. EPSTEIN: Objection, asked and answered.

3 THE COURT: Sustained.

4 BY MR. REGNER:

5 Q Now, it's been five years and seven months  
6 about since March 22nd 1999, something like that?

7 A Yes.

8 Q Your not hanging out in Koz Park any more,  
9 are you?

10 A No.

11 Q Today, your telling us that you weren't there  
12 when this shooting happened, right?

13 A Yes.

14 Q You know nothing about it?

15 A I know nothing.

16 Q You were at Koz Park?

17 A Yes, I was.

18 Q You gave us an alibi, right?

19 MR. EPSTEIN: Objection, that's a legal  
20 conclusion.

21 THE COURT: Sustained.

22 BY MR. REGNER:

23 Q What your saying is you were not there at the  
24 time of the murder, isn't that right?



1 A Yes.

2 MR. REGNER: Your Honor, I am marking

3 People's Exhibit 64 for identification.

4 BY MR. REGNER:

5 Q I am handing you what has been marked as

6 People's Exhibit 64 for identification. I want you to

7 take a moment to look at that.

8 MR. EPSTEIN: Judge, I would object. I

9 believe counsel is going to --

10 THE COURT: Sustained.

11 BY MR. REGNER:

12 Q You were present here on the eve of trial on

13 Monday with your attorney, right?

14 A The 13th of September?

15 Q Yes.

16 A Yes, I was.

17 Q You were right here in front of the Judge?

18 A Yes, I was.

19 Q And at that time, it was asked whether you

20 were going to give an alibi defense, wasn't it?

21 MR. EPSTEIN: Objection, Judge. Same

22 objection. I ask this whole --

23 THE COURT: Sustained. Go to a different

24 line of questioning.

1 BY MR. REGNER:

2 Q So, on March 22nd, 1999, you were about  
3 200 pounds?

4 MR. EPSTEIN: Objection, asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: I weighed 189.

7 BY MR. REGNER:

8 Q Had a little mustache?

9 A Yes.

10 Q Your Hispanic?

11 A Yes, I am.

12 Q I am going to show you People's 8 again.

13 It's a photograph of that lineup?

14 A Yes.

15 Q When you were arrested on March 24th, you put  
16 on your own clothes, right?

17 A Yes.

18 Q And those are your own clothes that you were  
19 wearing at the station, isn't that right?

20 A Right.

21 MR. REGNER: Nothing further, your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY

1 MR. EPSTEIN:

2 Q Mr. Abrego, you were asked whether those were  
3 your own clothes. Were you given a change of clothes  
4 while you were at the Area 5 headquarters.

5 A Yes, I was.

6 MR. EPSTEIN: Your Honor, may I approach?

7 THE COURT: Sure.

8 BY MR. EPSTEIN:

9 Q I am handing you what has been marked and  
10 previously marked as Exhibit 20 as a photograph of you.  
11 I don't think you got an opportunity to look at that on  
12 your cross examination. If you could take a look at  
13 that closely and tell me if you see any indication  
14 whatsoever of injuries on your arms or face or anything  
15 else that's exhibited?

16 A Yes. There is marks on my arms.

17 Q Sir, do you see any bruises around the wrist  
18 area where you would be handcuffed?

19 A It appears like it.

20 MR. EPSTEIN: Your Honor, may I approach?

21 THE COURT: Go ahead.

22 BY MR. EPSTEIN:

23 Q Showing you what has been marked previously  
24 54 and 55, these are the photos the State just showed

1           you a second ago, is that correct?

2           A     Yes.

3           Q     Sir, is your shirt lifted in that picture?

4           A     No, it's not.

5           Q     How about the other Exhibit, Exhibit 55,  
6           either in those pictures is your shirt lifted?

7           A     No.

8           Q     Did you lift your shirt in open court with  
9           attorney Dan Gallagher?

10          A     Yes, I did.

11          Q     And Mr. Gallagher looked at your body and  
12          what did he tell the Judge?

13          A     That I had bruises and scratch marks to my  
14          arms and chest.

15          Q     And what had you told -- where did you tell  
16          Mr. Gallagher those bruises and marks on your chest had  
17          come from?

18          A     From the detectives on the case.

19          Q     Mr. Abrego, let me ask you this. Did  
20          Detective Wojcik come into where you were handcuffed to  
21          the rail sitting on an eight-inch to one-foot bench and  
22          physically take his fist and drive it into your  
23          stomach?

24          A     Yes, he did.

1 Q And how many times did he do that?

2 A The first time?

3 Q Yes.

4 A 20 to 25.

5 Q If you could demonstrate with your hand how  
6 hard was each punch?

7 A About like that hard, a little bit harder.

8 Q Now, you said the second time he only punched  
9 you in the chest?

10 A Right.

11 Q Was he talking to you while he was punching  
12 you in the chest? Was there questions along that? Or  
13 how was it that he was just punching you in the chest?

14 A He was punching me in the chest. He wanted  
15 me to tell him what I had read off the statements.

16 Q Was doing both at the same time? Was he  
17 punching you and saying tell me this?

18 A He was really angry.

19 Q Okay. Was he using both hands or was it with  
20 one hand?

21 A Using both hands, left hand, right.

22 Q Now, you saw the state's attorney. If you  
23 told the state's attorney, do you believe that she  
24 could have stopped Wojcik from beating you further once



1 she left?

2 A No.

3 Q And in fact, you knew that at some point she  
4 would leave, right?

5 A Right.

6 Q And then you would be back into that little  
7 room?

8 MR. REGNER: Objection, argument.

9 THE WITNESS: Yes.

10 THE COURT: Sustained.

11 BY MR. EPSTEIN:

12 Q Eruby, the statement that you signed, why did  
13 you sign this statement?

14 A I was tired of getting beat, tired of being  
15 in that little room. It was a little room. Your  
16 handcuffed to a wall. I ain't moving around.

17 Q Sir, you went to bond court on March 27th of  
18 1999, right?

19 A Yes, I did.

20 Q And you were arrested on March 24th of 1999,  
21 right?

22 A Yes.

23 Q So, you were in that room for almost three  
24 days?

1 A Three whole days. About three whole days.

2 MR. EPSTEIN: No further questions, Judge.

3 THE COURT: Recross?

4 RECROSS EXAMINATION

5 BY

6 MR. REGNER:

7 Q Mr. Abrego, you gave this court-reported  
8 statement at 6:15 on March 26th, 1999, right?

9 A If that's what the paper said, yes.

10 Q That would have been about 43 hours after you  
11 first got to the police station?

12 A I am not that good with math. Yes.

13 MR. REGNER: Thank you.

14 THE COURT: Redirect?

15 MR. EPSTEIN: Judge, nothing based on that.

16 THE COURT: All right. You could step down,  
17 Mr. Abrego, and rejoin you were lawyer.

18 Next witness?

19 MR. EPSTEIN: Judge, at this time, the  
20 defense and the Cook County State's Attorney have  
21 entered into an agreement, a stipulation as to what a  
22 particular witness would testify to.

23 THE COURT: All right. Publish that  
24 stipulation.